

EXHIBIT 1

CASE NO. 20-CV-3118

JOHN FULTON

V.

ROBERT BARTIK, ET AL.

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**CASE NO. 20-CV-3119**

**ANTHONY MITCHELL**

**V.**

**ROBERT BARTIK, ET AL.**

**DEPONENT: JACOB RUBINSTEIN**

**DATE: DECEMBER 6, 2022**

1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

3 HON. JOAN H. LEFKOW

4 HON. MARIA VALDEZ

5 CASE NO. 20-CV-3118

6 CASE NO. 20-CV-3119

7  
8 JOHN FULTON,

9 Plaintiff

10 V.

11 ROBERT BARTIK, ET AL.,

12 Defendants

13  
14 ANTHONY MITCHELL,

15 Plaintiff

16 V.

17 ROBERT BARTIK, ET AL.,

18 Defendants

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22  
23 DEPONENT: JACOB RUBINSTEIN

24 DATE: DECEMBER 6, 2022

25 REPORTER: SYDNEY LITTLE

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1 STIPULATION

2

3 The VIDEO deposition of JACOB RUBINSTEIN was taken at

4 KENTUCKIANA COURT REPORTERS, 110 NORTH WACKER DRIVE,

5 CHICAGO, ILLINOIS 60606, via videoconference in which

6 all participants attended remotely, on TUESDAY the 6th

7 day of DECEMBER 2022 at 10:01 a.m. (CT); said deposition

8 was taken pursuant to the FEDERAL Rules of Civil

9 Procedure. The oath in this matter was sworn remotely

10 pursuant to FRCP 30.

11

12 It is agreed that SYDNEY LITTLE, being a Notary Public

13 and Court Reporter for the State of ILLINOIS, may swear

14 the witness.

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1                   PROCEEDINGS

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3     COURT REPORTER: On record. My name is Sydney

4     Little. I'm the online video technician and court  
5     reporter today representing Kentuckiana Court  
6     Reporters, located at 730 West Main Street, Suite

7     101, Louisville, Kentucky, 40202. Today is the 6th  
8     day of December, 2022. The time is 10:01 a.m.

9     Central. We are convened by video conference to  
10    take the deposition of Jacob Rubinstein in the  
11    matter of John Fulton versus Robert Bartik, et al.  
12    and Anthony Mitchell versus Robert Bartik, et al.  
13    pending in the United States District Court for the  
14    Northern District of Illinois Eastern Division.

15    Case number 20-CV-3118 and case number 20-CV-3119.

16    Will everyone, but the witness, please state your  
17    appearance, how you're attending, and the location  
18    you are attending from, starting with Plaintiff's  
19    counsel?

20    MR. AINSWORTH: This is Russell Ainsworth. I'm  
21    appearing on behalf of the -- both plaintiffs,  
22    along with Julia Riffert. And I'm appearing from  
23    Illinois, attending remotely.

24    MR. GAINER: Morning. This is Brian Gainer. I  
25    represent the witness and the Cook County

1 defendants. I'm attending remotely from Chicago.

2 MS. ISAAC: Hi, this is Carolyn Isaac on  
3 behalf of the City of Chicago. I am attending  
4 remotely from Chicago, Illinois.

5 MR. FASONE: Good morning, this is Warren  
6 Fasone along with my counsel, Breana -- oh, co-  
7 counsel, I should say, Breana Brill, for defendant  
8 officers. We're attending remotely in Illinois as  
9 well.

10 COURT REPORTER: Thank you. Mr. Rubinstein,  
11 will you please state your name for the record.

12 THE WITNESS: My name is Jacob Rubinstein,  
13 J-A-C-O-B, last name, R-U-B-I-N-S-T-E-I-N. And I  
14 go by Jake, J-A-K-E.

15 COURT REPORTER: Thank you. Do all parties  
16 stipulate that the witness is, in fact, Jacob  
17 Rubinstein?

18 MR. AINSWORTH: Yes, on behalf of the  
19 plaintiffs.

20 MR. FASONE: So stipulate --

21 MR. GAINER: I certainly do, yes.

22 MS. ISAAC: Yes, on behalf of the city as  
23 well.

24 COURT REPORTER: Thank you. And  
25 Mr. Rubinstein, will you please raise your right

1 hand? Do you solemnly swear or affirm that the  
2 testimony you're about to give will be the truth,  
3 the whole truth, and nothing but the truth?

4 THE WITNESS: Yes, I do.

5 COURT REPORTER: Thank you. Counsel may  
6 begin.

7 DIRECT EXAMINATION

8 BY MR. AINSWORTH:

9 Q Since your last deposition, have you reviewed  
10 any additional documents or -- well, have you reviewed  
11 any documents related to this case?

12 A Yes.

13 Q What documents have you reviewed?

14 A Transcripts of trial and motion testimony from  
15 the criminal case.

16 Q And so the -- you're referring to the two  
17 trial transcripts and your motion to suppress testimony?

18 A Correct. And the transcript from the first  
19 segment of the testimony.

20 Q When you -- oh, the transcript from the first  
21 deposition, you mean?

22 A Yes.

23 Q All right. When you're referring to the trial  
24 testimony and the motion to suppress testimony, was that  
25 your testimony that you reviewed?

1 A Yes.

2 Q Did you review anyone else's testimony?

3 A No.

4 Q Apart from those transcripts you just

5 mentioned, did you review any other documents related to

6 this case?

7 A I looked at the handwritten statement of  
8 Johnitta Griffin. And I looked at the memo that I wrote  
9 in March of 2003, which was an exhibit at the first part  
10 of the deposition, the memo to ASA Darren O'Brien. And  
11 I looked at some portions of the Felony Review Folders  
12 that were also marked as exhibits at the first part of  
13 this deposition.

14 Q Any other documents you reviewed apart from  
15 the transcripts you referenced, the handwritten  
16 statement by Johnitta Griffin, the murder memo that you  
17 authored, and portions of the Felony Review Folder?

18 A No.

19 Q Did you talk to anybody in preparation for  
20 your deposition here today, since the last deposition  
21 you gave?

22 A Yes.

23 Q Who did you speak with?

24 A Brian Gainer.

25 Q And on how many occasions did you speak with

1 Mr. Gainer?

2 A One.

3 Q When was that?

4 A Yesterday.

5 Q And for how long did you speak with

6 Mr. Gainer?

7 A Approximately 15 minutes.

8 Q Was anyone else present for that conversation?

9 A No.

10 Q Did you speak with anyone other than

11 Mr. Gainer in preparation for your deposition today?

12 A No.

13 Q When you reviewed your deposition testimony,

14 did you observe any errors in that testimony?

15 A I was not reviewing it for errors.

16 Q Did you review -- did you view any errors when

17 you reviewed your deposition testimony?

18 A I don't recall whether I noticed any errors.

19 My plan was to review the entire transcript before

20 signing when it's finished, so I was not reviewing it

21 for that purpose.

22 Q Well, what I mean was when you were looking

23 through the testimony, did you -- did anything stand out

24 to you like, "Oh, I got that wrong," or "That -- I made

25 a mistake in my testimony"?

1 A Nothing did, but given the nature of my  
2 review, I would not have expected it to. That will come  
3 later, that --

4 Q What was the nature of your --

5 A -- that type of review. Pardon me?

6 Q What was the nature of your review?

7 A I -- I read the transcript to see how it --  
8 how the words looked on paper.

9 Q What do you mean?

10 A I was curious about things like, um, and uh,  
11 and pauses. I just -- I wanted to see how the  
12 transcript compared to my recollection of the testimony.

13 Q Why were you curious about whether the words  
14 um or uh would appear in the transcript?

15 A I was curious to see whether it was a -- what  
16 I would call a -- a clean transcript. And that's not a  
17 commentary on the skill of the court reporter, it's a  
18 commentary on my own ability to speak without saying um  
19 or uh.

20 Q And why did you want to know if it was a clean  
21 transcript as opposed to, for example, reading the  
22 transcript for content, to see if you made a mistake or  
23 if there's something wrong in the transcript?

24 A The -- there's a review process after the  
25 deposition is completed, and I reserve a detailed review

1 of the transcript for errors for that time. I -- I just  
2 wanted to take a look at the transcript and see how it  
3 turned out.

4 Q Okay. But why -- so can you please explain --  
5 so are you saying that you didn't look to -- you weren't  
6 reading for the content of your answers, you were only  
7 looking to see if the transcript picked up mannerisms or  
8 misspeaks, like um or uh? Is that what you're saying?

9 A Not exactly.

10 Q Clarify for me, please.

11 A I wanted to read the transcript over, briefly,  
12 skim the transcript, see how it turned out. I did not  
13 do a detailed examination to determine whether my  
14 answers were perfect or whether the court reporter's  
15 transcription was perfect.

16 Q All right. And in that -- and so how long did  
17 you spend reading your transcript from the last  
18 deposition?

19 A Approximately 15 minutes.

20 Q And when did you do that?

21 A I don't recall.

22 Q Why did you review your testimony from the  
23 trial and the motion to suppress hearing?

24 A To refresh my recollection about both the  
25 events of March 2003, and my testimony in the motion

1 hearings and trial.

2 Q And so how long did you spend reviewing your  
3 trial testimony and motion to suppress testimony?

4 A Approximately 90 minutes.

5 Q All right. I'm going to share with you what  
6 we previously marked as Deposition Exhibit number 3, the  
7 Felony Review Folder. And I just want to ask you to  
8 tell me where your handwriting appears in this document,  
9 Exhibit 3?

10 A Right. Can you magnify it, please?

11 Q Sure. Looking at the first page of Exhibit  
12 number 3. Is that good?

13 A Can you magnify it a bit more --

14 Q Sure.

15 A -- please? Okay. So do you want me to go top  
16 to bottom and identify my handwriting?

17 Q Please. And I'm on the first page of  
18 Exhibit 3.

19 A Let's start with the very top line, "Number of  
20 defendants:" -- there's a number one. I don't know if  
21 that's my handwriting or not. Next line, "Number of  
22 victims/witnesses:" -- there's a one with a diagonal  
23 slash, I'm not sure if that handwriting is mine. Next  
24 line, "Page of page." There's a number two, slash, and  
25 then five. I'm not sure if that handwriting is mine.

1 Moving down to the next line, "ASA," and then there's a  
2 handwritten number three, which I believe is mine. And  
3 then my last name appears, and that is my handwriting.  
4 And then the date, "19 March '03," that's my  
5 handwriting. "Start: 1230," that's my handwriting.  
6 "Finish: 1715," I do not believe that's my handwriting.  
7 Moving -- continuing from left to right, "Action NO.:  
8 RUB" below that, "1, 7," that is my handwriting. Moving  
9 to the right, "Action: CI" I do not know whether that's  
10 my handwriting. Moving down to the next line, "ASA,"  
11 handwritten number four, "Name Varga," v as in Victor,  
12 A-R-G, as in George, A. That is not my handwriting.

13 Q Okay. Mr. Rubinstein, just -- I'm just  
14 looking for what is your handwriting on this document.

15 A Okay. So other than what I've already  
16 testified to, the line that says, "ASA," handwritten  
17 five, and then my name, and then the date, "20 March 03.  
18 Start 1055. Finish 1530." That is my handwriting.  
19 Moving down to the next box. It has the name -- "Last  
20 name, Fulton. First name, John." That's my  
21 handwriting. Then there's a blank box entitled  
22 Charges/Action, no handwriting there. The next box is  
23 titled Statement, and all of the handwriting in that box  
24 is mine, as well as the number one, and the parens, and  
25 the name, "Fulton" immediately above the statement box.

1 That's all my handwriting. And that's all I can see on  
2 the screen right now. Moving down to the box entitled  
3 "Arrest," there is an RD number of H, as in Henry, J as  
4 in John, 228346. That's my handwriting. Then to the  
5 right of that, it says, "Arresting agency CP," as in  
6 Paul, capital D as in David, that's my handwriting. The  
7 rest of the handwriting in that arrest box is not mine.  
8 The next box down is titled Evidence/Investigation, and  
9 that's blank. No handwriting. The next box is entitled  
10 Incident. And there's also writing above it that says,  
11 "Part one- narrative." So all of the handwriting in  
12 that Incident box as well as, "Part one-narrative" above  
13 it is mine. Would you like me to continue down?

14 Q Well, let me --

15 A Keep identifying my handwriting?

16 Q Let me pause you there. I appreciate your  
17 diligence. In the -- when did you write the handwriting  
18 that appears inside the box labeled Incident on the  
19 first page of Exhibit 3?

20 A I don't recall.

21 Q Do you know a range of when it was?

22 A March of 2003.

23 Q Do you know if this was created before or  
24 after you spoke to John Fulton for the first time?

25 A I do not recall whether it was -- whether I

1 wrote this before or after speaking to John Fulton for  
2 the first time.

3 Q And what does Action number 17 refer to, at  
4 the top of page 1 of Exhibit 3?

5 A I don't -- I don't have a clear recollection  
6 anymore of that term or what it meant in March of 2003.

7 Q What's your understanding of what it meant?

8 A I don't have a clear recollection of what it  
9 meant.

10 Q What was that referring to -- CI is continuing  
11 investigation, right?

12 A Correct. The -- the -- in this context, the  
13 -- the acronym CI means continuing investigation.

14 Q And so was the Action number 17 referring to  
15 the continued investigation, or did it refer to  
16 something else?

17 A I don't recall.

18 Q All right. Let's continue on at the bottom of  
19 page 1 of Exhibit 3.

20 A All right. So -- go ahead.

21 Q I believe that where it says, "Varga," that is  
22 not your handwriting, down to where it says, "RE  
23 interview, girlfriend," correct?

24 A "RE interview with GF." Correct. So that --  
25 you can tell there's a difference in handwriting here.

1 And that handwriting in the -- on the left margin where  
2 it says, "Varga," that is not my handwriting.

3 Q All right. And then going onto where it says,  
4 "Rubinstein 19 March 03," down to the "1600 to 1700,  
5 interview with Defendant 1 Fulton." Is that your  
6 handwriting?

7 A Yes.

8 Q And then at the bottom of the page where it  
9 says, "Rubinstein 20 March 03," down to where it says,  
10 "1440 to 1500, interview with Anthony Mitchell, with  
11 Rolston." Is that your handwriting?

12 A Yes.

13 Q All right. Going onto the second page of  
14 Exhibit 3. Is the writing, "Mitchell Anthony," at the  
15 top of the page, is that your handwriting?

16 A Yes.

17 Q And then where it says, "Statement Defendant  
18 2. Type, oral," everything in that box, is that your  
19 handwriting or is that somebody else's?

20 A In the box is my handwriting. I'm not  
21 positive whether the number two, where your cursor is  
22 now, next to, "Defendant number-", I'm not positive if  
23 that's a number two that I wrote.

24 Q All right. Going down to the next box,  
25 Witness 2. Is that your two and the -- is that your

1 circle around witness?

2 A I -- I don't know whether the circle is mine

3 or the two is mine. I don't know.

4 Q And then the writing that's in that box for

5 victim -- or Witness number 2, where it starts with,

6 "Type," and goes down to, "Relationship to defendant,"

7 is the handwriting in that box yours?

8 A Yes.

9 Q All right. And what about the next box for --

10 indicating Witness number 3. Inside the box, you know,

11 so excluding the number three and the circle inside the

12 box for Witness 3, is that your handwriting?

13 A Yes. With the exception of the phone number

14 at the very bottom, on the right-hand side of the box,

15 "773-704-8689." That is not my handwriting.

16 Q All right. And then at the bottom of the

17 page, there's handwriting in the margin at the bottom.

18 Your -- it starts at the top, "Rubinstein, 21 March 03,"

19 and going down to, "1400," with a dash after that. Is

20 that your handwriting?

21 A Yes.

22 Q I'm going to go to page 4 of Exhibit number 3.

23 This appears to be -- all right. And so then we have

24 now, "ASA 6 Rubinstein," is that your handwriting?

25 A Yes.

1 Q And is that the same for the date, "21 March  
2 03," and the "0700"?

3 A Yes.

4 Q And then is that your handwriting where it  
5 says, "Fulton, John" under Defendant number 1, on the  
6 -- page 4 of Exhibit 3?

7 A Yes.

8 Q And then where it says, "Statement Defendant  
9 number 3," on page 4 of Exhibit 3, is the handwriting  
10 inside that box yours?

11 A Yes.

12 Q And then we've got an RD number. Is that your  
13 handwriting for the RD number?

14 A Yes.

15 Q And then in the box titled Incident, where it  
16 says, "Part two," and then gives a narrative, is that  
17 your handwriting?

18 A Yes.

19 Q And then I believe this is not your  
20 handwriting at the bottom of the page, where it says,  
21 "Varga 3-21," going down to what appears to be to, "0125  
22 tb 335." Is that correct? It's not your handwriting?

23 A Correct, that is not my handwriting.

24 Q But where it says, "Continuing unfold," in  
25 number four, that is your handwriting, right?

1 A Yes.

2 Q All right. Going onto page number 5 of  
3 Exhibit number 3. I don't believe that's your  
4 handwriting for -- where it says, "Shaw Antonio"?

5 A Correct, that is not my handwriting.

6 Q And in the next box where it says, "Titled  
7 charge -- charges action," that's not your handwriting;  
8 is that correct?

9 A That is correct.

10 Q And then where it says, "Statement Defendant  
11 number 3," the box below, "Statement Defendant  
12 number 2," is that your handwriting?

13 A Yes.

14 Q And in here you say, "Statement substantially  
15 the same as video statement Defendant 2 gave later." You  
16 see that?

17 A Yes.

18 Q You reviewed the video recorded statement that  
19 Anthony Mitchell gave on March 21, 2003; is that right?

20 A Yes.

21 Q And on that same day, you reviewed the video  
22 statement and ensured that it was substantially the same  
23 as the statement that he provided to you earlier that  
24 day; is that right?

25 MR. GAINER: Object to form. Go ahead.

1 A I wouldn't say that I ensured it was because  
2 that implies I had the ability to affect the content of  
3 the statement. I watched the video and -- and based on  
4 watching the video, I concluded that it was  
5 substantially the same as what Anthony Mitchell had told  
6 me earlier that day, March 21st of '03.

7 Q All right. So just to be clear, you viewed  
8 Anthony Mitchell's statement on the same day that he  
9 gave it, that is March 21, 2003; is that right?

10 A Yes.

11 Q And you -- all right. And then where it says,  
12 "Witness number 4," the below, "Witness number 4," on  
13 page 5 of Exhibit 3, is that your handwriting?

14 A Yes.

15 Q And then the box below, where it says,  
16 "Witness number 5," is that your handwriting, inside the  
17 box below "Witness number 5," on page 5 of Exhibit 3?

18 A Yes.

19 Q And then I'm going to skip down to page 7 of  
20 Exhibit 3, where it says, "John Fulton." Is that your  
21 handwriting?

22 A Yes.

23 Q And then there's an RD number on page 7 of  
24 Exhibit 3. Is that your handwriting?

25 A Yes.

1 Q And then going down to where it says, "Part  
2 three," under "Incident." Is everything in that box  
3 your handwriting?

4 A Yes.

5 Q And where it says, "Continued on Folder 5," is  
6 that your handwriting?

7 A Yes.

8 Q On page 8 of Exhibit number 3, that is not  
9 your handwriting under, "Statement Defendant number 2,"  
10 in that box. Is that correct, not your handwriting?

11 A Right. Correct, that is not my handwriting.

12 Q And then moving down to page 10 of Exhibit  
13 number 3. That is not your handwriting where it says,  
14 "Statement Defendant number 3," on page 10 of Exhibit 3;  
15 is that correct?

16 A That's correct.

17 Q And then we go down where it says, "Part --  
18 incident part four." Is the handwriting in this box  
19 yours?

20 A No.

21 Q And I'm going to 11. Skipping page 11. Going  
22 to page 12 of Exhibit 3. This is a copy of what we've  
23 already seen. It just doesn't have the stuff at the  
24 bottom. So moving to page 13 of Exhibit 3. Is this  
25 your handwriting where it says, "Mitchell Anthony," at

1 the top?

2 A Yes.

3 Q And I believe we already viewed this, but just  
4 for completeness, where it says, "Defendant -- statement  
5 Defendant number 2," in the box below that on page 13 of  
6 Exhibit 3, is that your handwriting?

7 A The statement box?

8 Q Yeah, the statement box.

9 A Yes.

10 Q We -- I'm going to skip down to page 15 of  
11 Exhibit 3. Also a copy of what we've seen elsewhere.  
12 Going on to page 16 of Exhibit 3. And at the bottom of  
13 page 16, Exhibit -- of Exhibit 3, where it says,  
14 "Incident part three," that is your handwriting,  
15 correct?

16 A Yes.

17 Q And then on page 18 where it says, "Incident  
18 part four," is that your handwriting in that box?

19 A No.

20 Q All right. And then going on to page 19. Is  
21 that your handwriting on the first line of -- at the top  
22 of page 19 of Exhibit 3, where it says "ASA 1,  
23 Rubinstein. 14 March of 03"?

24 A No.

25 Q Is anything on the top of that line, your

1 handwriting?

2 A Can you repeat the last part of what you said?

3 Anything on the -- and then I --

4 Q On the --

5 A -- lost your question.

6 Q On the top line, to the right of Rubinstein.

7 Where it says, "Finish" or "Action number"?

8 A Is any of that my handwriting?

9 Q Correct. Is any of that your handwriting?

10 A No.

11 Q Do you know whose handwriting that is?

12 A No.

13 Q Do you know why somebody else wrote your name

14 and the time that you appeared and the time that you

15 finished on this document?

16 A No.

17 Q Have you seen that happen before, where

18 somebody else would write in your name, and the date,

19 and the time you started and the time you finished on an

20 investigation that you were conducting?

21 A I was not conducting any investigation.

22 Q Well, the --

23 MR. GAINER: Sorry, I got -- hold on. I was

24 unable to unmute. I just want to object to form

25 and mischaracterization to that last question.

1 BY MR. AINSWORTH:

2 Q And so have you seen that happen before, where  
3 somebody else wrote your name, the date, the start and  
4 finish time on a Felony Review Folder, in which you were  
5 acting as a Felony Review state's attorney?

6 A I can't cite any specific instance, but it  
7 would make sense to me that assistant state's attorneys  
8 working together would document when each was working on  
9 a particular element of a police investigation. So  
10 there's nothing unusual or abnormal about that.

11 Q Was anybody working with you on -- from Felony  
12 Review, on March 14th?

13 MR. GAINER: Object to form. Go ahead.

14 A I was part of a team on Felony Review on  
15 March 14th.

16 Q And was anybody from felony -- anyone else  
17 from Felony Review working with you on this case, the  
18 Collazo homicide, on March 14th?

19 MR. GAINER: Object to form. Go ahead.

20 A No. Well, I should ask a question first. What  
21 do you mean by working with me? Because the -- the  
22 phrase, "Working with you," could -- could have  
23 different meanings to different people.

24 Q Well, did anybody, for example, know that you  
25 were -- anybody from Felony Review know that you were at

1 Area 1 on March 14th from 7:00 a.m. to 11:45 a.m.?

2 MR. GAINER: Object to foundation. Go ahead.

3 A I can't say what anyone else knew or didn't  
4 know.

5 Q So to your knowledge, nobody else knew what  
6 was going on, right?

7 MR. GAINER: Same objection.

8 A I -- I disagree with that statement that you  
9 made.

10 Q Did you tell McRay Judge that you'd been at  
11 Area 1 on March 14th from 7:00 a.m. to 11:45?

12 A I don't recall.

13 Q Why didn't you create a Felony Review Folder  
14 for your interview with Johnitta Griffin?

15 A I don't know that I didn't or that I did. I  
16 don't recall whether I did or didn't.

17 Q Have you seen one?

18 A I'd have to look at all these pages again to  
19 tell you whether it's one of these. So the only Felony  
20 Review folders that I have reviewed are the ones that  
21 were produced in discovery that I reviewed in  
22 preparation for the deposition.

23 Q All right. Well thus far, pages 1 through 18,  
24 you haven't seen any Felony Review that you created for  
25 the interview with Johnitta Griffin, right?

1 A Have to go over them again because I wasn't --  
2 I wasn't looking at them for that purpose.

3 Q All right. Let's go down to -- am I correct  
4 that on page 19 from the top where it says ASA1  
5 Rubinstein down to statement defendant number, and then  
6 type oral and everything in that box, everything from  
7 the top of that page down to the bottom of the box for  
8 the statement, defendant number is not your handwriting,  
9 correct?

10 A So you're only asking me about the box that is  
11 entitled statement?

12 Q No, I'm asking about the whole page that you  
13 can see that I'm describing it as from ASA1 Rubinstein  
14 at the top, all the way down to the box to the  
15 statement. That's not your handwriting, correct?

16 A In the box entitled defendant number where  
17 there's a -- a number one next to the right of the words  
18 defendant number, there's a street address, 500 East  
19 33rd Street, Chicago, Illinois. That is my handwriting.  
20 Below that, there is sex M, race one. I don't know if  
21 that's my handwriting or not, but the address is my  
22 handwriting.

23 Q And the rest of the handwriting on this page  
24 that I've referenced is not your handwriting; is that  
25 correct?

1 A From what I see on the screen, I can't see the  
2 whole page on the screen.

3 Q I'm not asking about the whole page. I'm  
4 asking you about from ASA1 Rubinstein down to where it  
5 says the statement defendant number, that box. Is that  
6 all that's not your handwriting stuff to the address?

7 A The address in the defendant box is my  
8 handwriting, including the street address, city, and  
9 state. Below that the capital letter M and the number  
10 one might be, but I'm not sure. And below that to the  
11 bottom of the screen that I can see is not my  
12 handwriting.

13 Q Right. And then moving down to where it says  
14 RDHJ228346, and down from there, am I correct that none  
15 of that is your handwriting to the bottom of the page?

16 A No, you're not correct.

17 Q I'm not. What part of this is your  
18 handwriting?

19 A The name Edward Winstead is my handwriting in  
20 the -- to the right of the words evidence/investigation.  
21 Moving to the right of that, the name Len, L-E-N,  
22 Rolston, R-O-L-S-T-O-N, is my handwriting. And there's  
23 a -- a slash Joe, J-O-E, Struck, S-T-R-U-C-K. That's my  
24 handwriting. And then there's --

25 Q You don't have to spell the names, sir.

1 A Pardon me?

2 Q You don't have to spell all the names, sir.

3 MR. FASONE: Russell, he can answer the  
4 question how he wants to answer it. I mean, I --

5 MR. AINSWORTH: No, I'm just saying he doesn't  
6 have to answer the -- he doesn't have to spell the  
7 name -- the names. Because you know, if he's  
8 trying to slow things down, you know, I'll just get  
9 more time.

10 MR. FASONE: Yeah, no. No one's trying to  
11 slow things down. I don't know why you have to be  
12 so accusatory. You're asking him these questions  
13 about what is and isn't his handwriting. Go ahead,  
14 Jake. Answer -- finish answering the question.

15 MR. AINSWORTH: Yeah, but you don't need to  
16 spell because we'll know what you're doing.

17 A So evidence/investigation to the right of  
18 that, it says Edward Winstead. That's my handwriting.  
19 To the right of that it says Len Rolston,  
20 R-O-L-S-T-O-N. That's my handwriting.

21 BY MR. AINSWORTH:

22 Q You don't have to spell, Jake, because we know  
23 that you're just trying to solve the clock. You've  
24 already told us this.

25 MR. FASONE: Russell, this is completely

1 inappropriate. If you want to ask him about his  
2 handwriting, he's got to tell you the answers to  
3 your questions.

4 MR. AINSWORTH: He doesn't need to spell names  
5 that are written for the court reporter. We don't  
6 need your -- I'm -- I just told him he doesn't need  
7 to spell them. If you continue to spell them,  
8 Jake, then I'm going to ask for more time because  
9 you're wasting clock, so you know?

10 MR. FASONE: No one's wasting any clock. There  
11 are two hours left in this deposition.

12 MR. AINSWORTH: There's two and a half hours.

13 MR. FASONE: Well, not anymore. I mean, we've  
14 already been going a half hour, so Jake, just don't  
15 spell the words. I mean, this is outrageous.

16 MR. AINSWORTH: Okay.

17 A One thing about Rolston is that I've seen it  
18 misspelled a couple times as R-A-L-S-T-O-N and I'm  
19 trying to help with a good transcript by spelling it  
20 correctly, but I will -- I will not do that anymore.

21 Okay. So Len Rolston then slash then it says Joe  
22 Struck, then there's a slash and it says Bob Girardi and  
23 those names are my handwriting.

24 BY MR. AINSWORTH:

25 Q Why did you write Edward Winstead, Len

1 Rolston, Joe Struck, and Bob Girardi?

2 A That was part of what's above. So there's a  
3 box above that lists the names of detectives that are  
4 involved and you can see someone else wrote two other  
5 names and I was adding names below that of other  
6 detectives that were involved in the investigation.

7 Q So these are the detectives that you  
8 interacted with the -- with during the investigation,  
9 Edward Winstead, Len Rolston, Joe Struck, and Bob  
10 Girardi; is that correct?

11 A Yes. Winstead, Rolston, Struck, and Girardi  
12 are the detectives that I worked with. I'm -- I'm  
13 pausing to think if there's any others that I worked  
14 with on this case. Just those four.

15 Q All right. And then going down to the bottom  
16 of page 19 of Exhibit 3 where it says Incident is, I  
17 take it, this is not your handwriting in the box -- in  
18 this box; is that correct?

19 A Yes, that's correct.

20 Q All right. Going onto page 20 of Exhibit 3,  
21 is this your handwriting in the box labeled, Defendant  
22 number 2 at the top of page 20?

23 A Yes.

24 Q And then down to charges action. Is that your  
25 handwriting in that box?

1 A One of the words is, the other isn't.

2 Q Is murder your handwriting?

3 A Yes.

4 Q But approved is not your handwriting, correct?

5 A That's correct.

6 Q And then the next box on page 20 of Exhibit 3

7 where it says statements, defendant number, that is not

8 your handwriting; is that correct?

9 A Yes, that's correct.

10 Q And then going down to victim number one, is

11 any -- the handwriting in that box is yours?

12 A All of the handwriting in that box, the one  
13 that says witnam -- or excuse me, witness, excuse me,  
14 victim witness number one below that, all of that  
15 handwriting is mine.

16 Q Did you write "still dead" next to condition  
17 prognosis?

18 A Yes, that's my handwriting.

19 Q Why'd you write still dead next to condition  
20 prognosis?

21 A That was his current condition. Christopher  
22 Collazo's current condition at that point.

23 Q And then down here where it says witness  
24 number one, is this your handwriting in this box?

25 A Yes. That box -- part of it's cut off on the

1 left margin, but I think it says victim/witness number  
2 one. All of the handwriting in that box is mine.

3 Q And then I take it, this is not your  
4 handwriting where it says next event ASA?

5 A Correct. That is not my handwriting.

6 Q We've already looked at the last two pages of  
7 this. All right. So after you questioned John Fulton  
8 on the morning of March 21st -- '19 of 2003, you then  
9 questioned Anthony Mitchell; is that right?

10 A Yes. I wouldn't say que -- I don't think  
11 questioned is the right verb, but I spoke to each of  
12 them that day. Mr. Mitchell later and Mr. Fulton  
13 earlier.

14 Q And when did you speak to Mr. Mitchell?

15 A Late morning.

16 Q What did you do between the time that you  
17 spoke to John Fulton and the time that you talked to  
18 Anthony Mitchell?

19 A I don't recall.

20 Q Did you call for a video reporter?

21 A I don't recall.

22 Q And just showing you Exhibit 3 again. So  
23 looking at page 22 of Exhibit number 3, at the bottom  
24 there, you indicate that you interviewed Anthony  
25 Mitchell at 9:45 in the morning, right?

1 A Yes.

2 Q And it was an interview, right?

3 A Yes.

4 Q And so you interviewed him, you didn't  
5 question him, is that what you're saying?

6 MR. FASONE: Objection, argumentative. Go  
7 ahead.

8 A I would describe it accurately as an  
9 interview, a conversation. I did ask questions, but I  
10 want to avoid any connotations from the verb questioned  
11 him.

12 Q Right. So can you tell us anything you did  
13 between interviewing John Fulton at 8:30 to 9:15 a.m.  
14 before speaking to Anthony Mitchell at 9:45 to  
15 10:30 a.m.?

16 A I don't recall any specifics of what elements  
17 of the case I was working on between 9:15 and 9:45 in  
18 the morning on March 21st of '03.

19 Q Did either Mr. Mitchell or Mr. Fulton -- well,  
20 strike that. Did you believe that John Fulton lied to  
21 you in any of his conversation with you on March 21st, I  
22 should say?

23 A Did I believe as I was hearing him talk to me  
24 that anything he said was a lie?

25 Q Yeah.

1 A I wasn't sure.

2 Q So there's nothing that stood out to you like,  
3 "Oh, I think this guy's, you know, pulling one over on  
4 me," right?

5 MR. FASONE: Object to form. Go ahead.

6 A I don't recall having that thought process,  
7 nb, thinking he was trying --

8 Q Do you now believe -- sorry, go ahead.

9 A I don't recall having the thought process of,  
10 so I'm -- I'm taking myself back to 8:30 in the morning,  
11 March 21, 2003 and trying to recall what was going  
12 through my mind as John Fulton was talking to me. And I  
13 don't recall thinking to myself, he's pulling one over  
14 on me. I don't recall that thought process.

15 Q Right. Now, do you believe that John Fulton  
16 was lying to you on the morning of March 21st?

17 MR. FASONE: Object to foundation. Go ahead.

18 A No, but I don't necessarily believe he told me  
19 the whole truth either because of my experience  
20 interviewing suspects in homicide cases.

21 Q Right. But you don't know what he was not  
22 telling you the truth about. Is that fair to say?

23 A That is fair to say. I certainly didn't -- I  
24 didn't know with any degree of certainty what -- what he  
25 was telling in a completely accurate and truthful manner

1 and what he might have been shading or minimizing or  
2 changing in his own interest.

3 Q Minimizing his misconduct and putting on  
4 somebody else, and that kind of thing?

5 MR. FASONE: Object to form. Go ahead.

6 A Yes. I -- I don't know to what extent he was  
7 minimizing his own responsibility for what happened and  
8 putting more responsibility on Anthony Mitchell or  
9 Antonio Shaw.

10 Q When you spoke to Anthony Mitchell on  
11 March 21, 2003, did you believe that he was lying to in  
12 any way?

13 A I don't -- my answers to -- my answer to that  
14 question would be similar to my answer to the question,  
15 the similar question you asked about John Fulton, which  
16 is that I did not -- I do not recall having the  
17 impression as I spoke to Anthony Mitchell that he was  
18 pulling one over on me. But I also -- I also recognized  
19 that Anthony Mitchell was describing the events in a way  
20 that put more accountability on John Fulton and vice  
21 versa.

22 Q Did you -- when you spoke to John Fulton, was  
23 there anything that you saved and didn't ask him about  
24 because you wanted to ask him about it when he gave his  
25 video confession later?

1 MR. FASONE: Object to form. You just said

2 Fulton. I think you meant Mitchell, Russell.

3 MR. AINSWORTH: No, I mean Fulton.

4 MR. FASONE: You -- but okay, go ahead.

5 A So the question is, were there any -- were  
6 there any questions when I talked to John Fulton between  
7 8:30 and 9:15 in the morning, March 21st, were there any  
8 questions that I deliberate -- that I wanted to ask, but  
9 deliberately didn't ask because I wanted to ask those if  
10 and when there was a videotape statement. Is that the  
11 question?

12 BY MR. AINSWORTH:

13 Q That's correct.

14 A Not that I recall.

15 Q All right. So when you spoke to Anthony  
16 Mitchell, it was half an hour after you spoke to John  
17 Fulton, right?

18 A Yes.

19 Q And when Anthony Mitchell talked to you, he  
20 told you that they accosted Collazo, put him in the  
21 trunk, not in any kind of plastic bag or anything, then  
22 drove to an alley, stopped and then produced a plastic  
23 bag to put the body in, correct?

24 A I don't have a detailed or clear recollection  
25 of the substance of what Anthony Mitchell told me on

1 March 21st of 2003.

2 Q Let me show you what we'll mark as Exhibit  
3 number 11 and it's Anthony Mitchell's statement here.

4 Actually, let me stop sharing it and I'll put it in the  
5 chat for people.

6 (EXHIBIT 11 MARKED FOR IDENTIFICATION)

7 MR. FASONE: Russell, while you're doing that,  
8 just a reminder that we have a status in --

9 MR. AINSWORTH: I understand.

10 MR. FASONE: -- 13 minutes, so maybe we could  
11 cut it off at 10:55 and then just jump on the  
12 phone?

13 BY MR. AINSWORTH:

14 Q Sounds good. First time I do this always  
15 takes longest. Okay. In the chat now I'll share it  
16 with you. So going to the -- let me show you the first  
17 page, so we're oriented. This is the transcript of the  
18 video statement of Anthony Mitchell. Do you see that?

19 A Yes. Can you magnify that please?

20 Q Oh, sure. You see that's the video statement  
21 of Anthony Mitchell?

22 A Yes.

23 Q I'm going to take you down to page 20 -- 29 of  
24 Exhibit number 3. Sorry, Exhibit number 11. You see at  
25 the top it says, "What did you do with Chris? We all

1 three of us picked Chris up and we put him in the trunk,  
2 closed the trunk, got in the car and blasted the radio.  
3 Backed up, went to Rockwell and went the opposite way on  
4 Foster." Do you see that?

5 A Yes.

6 Q And then Mitchell says that they then went to  
7 a gas station, correct?

8 A Yes.

9 Q And then after the gas station, I'm going to  
10 move on to page -- the bottom of page 30. Then they  
11 went to an alley off of Foster after the gas station,  
12 correct?

13 MR. FASONE: Object to form. Go ahead.

14 A Alley off of Foster after the gas station.

15 Where do you see that?

16 Q Well, after then where did you guys drive  
17 after they were at the gas station, right?

18 A Well, I'm just looking at snippets of -- of  
19 this transcript and --

20 Q Sure. Let me go back up. All right. It  
21 says, "How far did you guys drive before you stopped? We  
22 drove about three blocks before we stopped at Citgo gas  
23 station." And then there's questions and answers  
24 regarding what happened at the gas station. Do you see  
25 that? It's on page 29 of Exhibit 11.

1 A I'm reading it now. Okay. I see. I see.

2 Q And then going down to page 30, it's talking  
3 about the -- what happened to the gas can, and then the  
4 question is, "Then where did you guys drive?" And  
5 Anthony Mitchell says, "We got back on Foster heading  
6 towards Lake Shore Drive. We stop again maybe four or  
7 five blocks after the gas station on Paulina." Do you  
8 see that?

9 A Yes.

10 Q And then he says, "We went to the end of the  
11 block. We went up the alley that way we" -- he's  
12 describing going into an alley where it says, the bottom  
13 page, "So when you guys made a turn to go down the  
14 alley, did you stop in the alley?" "We stopped to look  
15 and see what the scenery looked like, and it was a big  
16 brown garage." And he refers to going in the alley. Do  
17 you see that?

18 A I see that, yes. What you're reading -- what  
19 you're saying is not really what's on the page.

20 Q Well --

21 A It seems like you're paraphrasing what's on  
22 the page and I'm reading what's on the page, but you're  
23 also paraphrasing at the same time.

24 Q Right. And then at the -- then they refer to  
25 -- they pop the trunk and they open the trunk and they

1 got duct tape out of the trunk. Do you see the  
2 references to the duct tape?

3 A Yes. Again, you're paraphrasing what it's  
4 here.

5 Q That's okay. Yeah. And then on page 32 at  
6 the top it says, "And then he grabbed the plastic bag.

7 Okay. And then he told me and stick to like tilt -- to  
8 like tilt his body so we wouldn't have to take him  
9 completely out of the trunk to put the bag over him.

10 Okay. Because someone's going to see it. Now, did  
11 someone tape up Chris's body? I taped his arms. John  
12 taped his feet, Stick put a towel on his mouth and  
13 wrapped some tape around his face. Okay. Then what did  
14 you guys do? Then we put him back in the trunk. Okay.

15 Then we left." And it says, "Before you put him back in  
16 the trunk, did you put Chris's body after he was taped  
17 up in the plastic bag?" "Yes, sir." Do you see that,  
18 sir?

19 A Yes.

20 Q So Anthony Mitchell, a half an hour after you  
21 talked to John Fulton, told you that they stopped in an  
22 alley to put the body in a bag, right?

23 A Yes.

24 Q And Fulton had told you it was at the scene at  
25 Rockwell and Foster that they put the victim's body in a

1 bag, right?

2 A I would have to go back to the memo that I

3 wrote to refresh my recollection about that.

4 Q All right. Well, did you have any questions

5 of Anthony Mitchell why he was saying that they stopped

6 in an alley to put the victim in a plastic bag when a

7 -- when John Fulton had told you that at the scene of --

8 because you remember from the last deposition, right? We

9 had that whole discussion about do you think it was odd

10 that John Fulton was putting the body inside a giant

11 plastic bag at the -- at Foster and Rockwell in the --

12 in a residential area where anyone could see it?

13 MR. FASONE: Object to form. That was

14 multiple questions. Go ahead.

15 A I don't actually know what the question is.

16 Q Do you remember us talking at the last

17 deposition about being -- about, you know, whether it

18 was odd that in a residential area of Foster and

19 Rockwell, John Fulton and his remains were placing the

20 victim's body in a bag?

21 A I recall you asking some questions along those

22 lines, but I don't have a detailed recollection of -- of

23 what you asked or what I answered.

24 Q Well, why don't we --

25 A And I -- what I recall is that John Fulton

1 described the bag as being a laundry bag. I don't -- I  
2 don't recall whether he told me what it was made of, but  
3 I -- what I do recall is him saying -- him, John Fulton  
4 saying laundry bag.

5 Q Well, do you have any questions for Anthony  
6 Mitchell about why -- why did you -- why are you saying  
7 that you placed the victim's body in a plastic bag in  
8 the alley? Do you have any questions about -- for him  
9 about why they did it there as opposed to somebody else?

10 MR. FASONE: Object to form. Go ahead.

11 A I don't recall whether I asked him that  
12 question or not. When I say him, I mean, Anthony  
13 Mitchell.

14 MR. AINSWORTH: Let's pause there and we'll  
15 hop on the -- with the judge and then we'll come  
16 back in --

17 COURT REPORTER: We are off the record. The  
18 time is 10:56.

19 (OFF THE RECORD)

20 COURT REPORTER: We are back on the record for  
21 the deposition of Jacob Rubinstein being conducted  
22 by videoconference. My name is Sydney Little.  
23 Today is December 6, 2022. And the time is  
24 11:42 a.m.

25 BY MR. AINSWORTH:

1 Q Okay, Mr. Rubinstein. I'm going to share with  
2 you what we previously marked as Exhibit number 4, which  
3 is your murder memo that you wrote. And I'm going to  
4 direct you to the portion of Exhibit number -- page 4 of  
5 Exhibit number 4 at the very bottom of that page where  
6 it says, "Riff wanted to put Chris in the trunk of the  
7 car. Chris was moving his feet a little but not much.  
8 He was not screaming, just groaning and moaning. He was  
9 still alive. Fulton did not want blood in his trunk.  
10 Fulton had a laundry bag in his trunk full of dirty  
11 laundry because one of his females from the west side  
12 was going to do his laundry for him. He emptied the  
13 laundry bag out into the trunk. The bag was really big.  
14 They all three then put Chris into the laundry bag. He  
15 fit all the way in. They all three of them put Chris  
16 into the trunk. They drove to an alley somewhere on the  
17 north side." Do you see that?

18 A Yes.

19 Q All right. So John Fulton told you that they  
20 put Chris Collazo, the victim, into this really big  
21 laundry bag at the scene of the beating at Foster and  
22 Rockwell and then drove to an alley somewhere in the  
23 north side, right?

24 MR. FASONE: Objection. Asked and answered.

25 Go ahead.

1 A Can you scroll up to page 4 of 6?

2 Q Yeah.

3 A Okay. I see. All right. And can you re-ask  
4 or ask the reporter to reread the question?

5 Q Sure. John Fulton told you that they put  
6 Chris Collazo into the really big laundry bag when all  
7 there at Foster and Rockwell and then drove to an alley  
8 on the north side, right?

9 MR. FASONE: Asked and answered. Go ahead.

10 A Yes. Yes and no. What John Fulton told me is  
11 that they parked off Foster and Rockwell, which I  
12 interpreted as meaning in that vicinity. I don't know  
13 if they were literally on the corner of Foster and  
14 Rockwell. So what I took him to be saying, him being  
15 John Fulton, was they parked near Foster and Rockwell.

16 Q Okay. So Mr. Rubinstein, John Fulton told you  
17 at the scene of the beating, they put the victim into a  
18 really big laundry bag, right?

19 MR. FASONE: Objection. Asked and answered.

20 Go ahead.

21 A Yes.

22 Q And then they drove to an alley, correct?

23 A Yes.

24 Q And then half an hour after you spoke to  
25 Mr. Fulton, you talked to Mr. Mitchell and Mr. Mitchell

1 told you that they put the victim into the trunk of  
2 Mr. Fulton's car at the scene of the beating without  
3 placing him in plastic or any bag, right?

4 MR. FASONE: Objection. Asked and answered.

5 Go ahead.

6 A Can you go back to the transcript of  
7 Mitchell's statement, please?

8 Q I should just -- let me -- I've shown you  
9 Exhibit 11 and showing you on page 20 -- 29 where it  
10 says, "What did you do with Chris? We, all three of us  
11 picked Chris up and we put him in the trunk, closed the  
12 trunk, got in the car and blasted the radio, backed up,  
13 went to Rockwell, and we went the opposite way on  
14 Foster." Do you see that?

15 A Yes.

16 Q And there's no mention of placing the victim  
17 in a plastic bag until they get to the alley and then  
18 they place him in a plastic bag. Remember that from  
19 just a little bit ago?

20 A Yes.

21 Q All right. So Anthony Mitchell told you that  
22 they placed the victim in the trunk without placing him  
23 - without placing the victim into a plastic bag at the  
24 scene of the beating, right?

25 MR. FASONE: Objection. Asked and answered.

1 Go ahead.

2 A Yes.

3 Q And he described this whole placing, you know,  
4 the body into a plastic bag in the alley that was where  
5 they parked so that people wouldn't see, and they didn't  
6 take the body all the way out of the trunk, but he  
7 described putting the body into a bag in the alley  
8 without taking the body out of the -- completely out of  
9 the trunk, right?

10 MR. FASONE: Object to form, asked and  
11 answered. Go ahead.

12 A Yes, that -- that is what Anthony Mitchell  
13 said.

14 Q Right. Did you ask Anthony Mitchell about the  
15 discrepancy between what he was telling you about where  
16 the body was placed into the plastic bag and what  
17 Mr. Fulton was telling you where the plastic bag was,  
18 where the body was placed into the plastic bag?

19 A I don't recall --

20 MR. FASONE: Object to form, go ahead.

21 A I don't recall if I asked him that.

22 Q Were you curious about why Fulton and Mitchell  
23 were telling two completely different stories about when  
24 the victim was placed in the plastic bag?

25 MR. FASONE: Object to form. Go ahead.

1 A Fulton and Mitchell were not telling two  
2 completely different stories. They -- they differed on  
3 that detail, but overall their stories were consistent.

4 Q Well, I'm -- I mean, it's a completely  
5 different story about when the victim was placed in the  
6 bag, right?

7 MR. FASONE: Object to form. Go ahead.

8 A No, I disagree. I was viewing the stories as  
9 a whole, I was looking at them holistically. The  
10 totality of each individual's description of the events  
11 of March 9 to 10 of 20 -- 2003 were generally  
12 consistent.

13 Q I'm not talking about the totality, that's not  
14 my question. You know, you -- you'll read this  
15 transcript back and read it carefully and see what I'm  
16 saying. I'm asking you sir, about -- just focus on when  
17 the victim was placed inside a really big bag.

18 Mr. Mitchell and John Fulton told you two completely  
19 different stories about when, when the victim was placed  
20 in that really big bag, right?

21 MR. FASONE: Object to form, argumentative. Go  
22 ahead.

23 A Fulton and Mitchell differed on the detail of  
24 when they put Christopher Collazo in a bag.

25 Q And then showing you Exhibit -- showing you

1 Exhibit 3, the Felony Review folders. Getting to the  
2 page that I -- this is page 20 of Exhibit 3, and this is  
3 Judge's notes about his interview with Fulton the  
4 morning of March 19th. And we talked about this last  
5 time where it talks about -- see at the end of the  
6 paragraph, it says, "Defendant 1 Stick held victim up  
7 while Riff taped him with duct." And then if you go to  
8 -- well, sorry, I -- let me withdraw that. I'm going to  
9 -- just to orient you. It's the statement that March  
10 19th at 4:45 a.m. taken by Judge, and he talks about --  
11 at the end of the first box, it says, "His \$300 back on  
12 March 9, 2003." And then you scroll down to, you know,  
13 actually have to scroll up. On March 9th -- and I just  
14 want to make sure I'm -- yeah, okay. So page 19 is  
15 where it starts, and then it goes on to page 20. On  
16 March -- it says on March 19th -- or March 9, 2003,  
17 "Defendant spoke to Precious and found out where victim  
18 would be. Defendant and two co-offenders, Stick and  
19 Riff, drove north to Rockwell and Foster and waited for  
20 victim to get off the bus. Co-defendants chase and beat  
21 victim. Riff had a small metal replica bat to beat  
22 victim with it. Defendant drove his car to where victim  
23 was being beaten, opened the trunk and helped co-  
24 defendants put victim in trunk. Defendant hit victim  
25 twice. Riff then drove to an alley, and all three

1 defendants took victim out. Defendant and Stick held  
2 victim up while Riff taped him with duct tape." And then  
3 back to page -- "with duct tape. Victim was put back in  
4 trunk and Riff drove everyone south to where victim was  
5 dumped. Defendant told co-defenders about plastic bag  
6 and Defendant's bowling bag. Bag was placed over a  
7 victim and more duct tape was applied. Defendant then  
8 got a refrigerator box to victim -- and victim was put  
9 inside. Defendant told Riff where this gasoline was in  
10 trunk, Riff poured gas on box and set on fire." Do you  
11 see that, sir?

12 A Yes.

13 Q Okay. So Fulton told Judge that the plastic  
14 bag was placed over the victim at the scene of the fire,  
15 not the scene of the beating or the alley, right?

16 MR. FASONE: Objection. Foundation. Go  
17 ahead.

18 A I'm -- I'm reading what you have said is McRay  
19 Judge's summary of John Fulton's statement. And yes,  
20 that summary says that the plastic bag was put on --  
21 that the Defendant Fulton and -- and Mitchell and Shaw,  
22 the defendants, put the plastic bag on Christopher  
23 Collazo near or at the scene of where they burned him.  
24 Burned his body.

25 Q And they -- and he said that the bag came from

1 his bowling bag, correct?

2 MR. FASONE: Objection. Foundation. Go  
3 ahead.

4 A That -- that's what McRay -- what McRay  
5 Judge's summary of Fulton's statement says, yes.

6 Q And so you've got Fulton saying to Judge, "The  
7 plastic bag came from a bowling bag and it was placed on  
8 the victim at the scene of the fire." Fulton then tells  
9 you that the bag was a laundry bag and it was placed on  
10 the victim at the scene of the beating. And then  
11 Mitchell's saying the plastic bag was placed on the  
12 victim in the alley after the beating, but before the  
13 body was taken to the location where it was set on fire,  
14 right?

15 MR. FASONE: Objection. Foundation. Go  
16 ahead.

17 A So are you asking me -- what is the question?  
18 Q The question is, sir, according -- there are  
19 three statements that you were aware of as of  
20 March 21, 2003. You're aware that Fulton had given a  
21 statement to Judge, right?

22 A Right.

23 Q And you're aware that Fulton gave a statement  
24 to you on March 3rd -- 21st, right?

25 A Yes.

1 Q And you're aware that Mitchell gave you a  
2 statement on March 21st, correct?

3 A Yes.

4 Q And Judge briefed you on what the statement  
5 was that you -- that he obtained from Fulton, correct?

6 A I don't recall if he did that.

7 Q All right. Well -- sorry. And Judge -- McRay  
8 Judge gave you an outline of what Fulton had told him,  
9 right?

10 A I don't recall if he did.

11 Q All right. Well, let me show you your  
12 testimony from the motion to suppress hearing. I'm  
13 going to direct your attention to page BB 73, and this  
14 is lines three to six. You were asked a question, "Did  
15 McRay Judge tell you anything about -- about the  
16 conversation that he had with Mr. Fulton?" Answer, "He  
17 gave me a brief outline of what the defendant had told  
18 him."

19 A Yes, I see that.

20 Q Do you agree, sir?

21 A Yes.

22 Q Do you dispute that Judge told you what --  
23 gave you an outline of what Fulton had told him about  
24 the murder?

25 MR. FASONE: Object to form. Go ahead.

1 A No, I just didn't recall. But now you've  
2 refreshed my recollection with that transcript. So it's  
3 true that McRay Judge gave me a brief outline of what  
4 John Fulton had said to Judge.

5 Q And so you would agree with me that Fulton  
6 saying that the bag came from the bowling bag -- well,  
7 strike that. You would agree with me that Fulton saying  
8 that the bag was placed on the victim at the scene of  
9 the fire, and Fulton saying that the bag was placed on  
10 the victim at the scene of beating, are two completely  
11 different locations of when the bag was placed on the  
12 victim, right?

13 MR. FASONE: Object to form. Go ahead.

14 A Well, the characterization completely I'm not  
15 going to buy into. But what I -- what I can say is yes,  
16 that between the three conversations I had with John  
17 Fulton and the one conversation I had with Anthony  
18 Mitchell and the summary or outline of the conversation  
19 that McRay Judge had with John Fulton, there were some  
20 inconsistencies as to some details.

21 Q I'm not asking about the -- like that's not my  
22 question. You can't make up your own question --

23 MR. FASONE: Who did that? We don't need the  
24 speech. No one did that. Now you're wasting time.  
25 So I think that maybe just ask a proper question

1 and he can give you a different answer.

2 BY MR. AINSWORTH:

3 Q Fulton told you that the bag was placed on the  
4 victim in a different time and location than what Fulton  
5 told Judge, correct?

6 MR. FASONE: Objection. Foundation. Go  
7 ahead.

8 A Yes. Based on -- based on the statement --  
9 the summary statement that Judge wrote summarizing his  
10 conversation with Fulton. Yes, Fulton gave different  
11 details at different times.

12 Q And Mitchell told you a different location and  
13 time that the body was placed into a bag than Fulton  
14 told you or Fulton told Judge, right?

15 MR. FASONE: Objection, foundation, asked and  
16 answered. Go ahead.

17 A Yes.

18 Q Did Mitchell tell you where the plastic bag  
19 came from?

20 A I don't recall.

21 Q Were you curious to know where this like --  
22 well, strike that. Did you think them having a bag big  
23 enough to fit a human inside it suggested there was some  
24 premeditation to placing the body in the bag?

25 MR. FASONE: Object to form. Go ahead.

1 A So are you asking me if in 2003 I inferred  
2 premeditation from the fact that Fulton had a bag large  
3 enough to put a body in?

4 Q Or potential premeditation?

5 A I don't recall whether I had that inference in  
6 2003 or not.

7 Q Well, do you think now the fact that they had  
8 a human sized bag with them on the way to go commit this  
9 crime suggested that maybe they thought they'd place him  
10 in a plastic bag?

11 MR. FASONE: Object to form and foundation. Go  
12 ahead.

13 A I can't speculate about their mindset,  
14 motivation, or what level of planning they did. I just  
15 don't have enough information to be able to do that.

16 Q And when you spoke to Mitchell, he told you  
17 they put a towel in the victim's mouth, right?

18 A I recall a -- a towel or a rag or something  
19 being placed into the victim's mouth. I don't have a  
20 specific recollection of who told me that, but I do  
21 recall one or more of the offenders telling me that. You  
22 could refresh my recollection, and then I could give you  
23 a -- a more detailed answer.

24 Q Sure. Let me -- I'm going to first show you  
25 -- trying to find it in Mitchell's -- let me show you

1 Exhibit number 4. All right. This is page 5 of  
2 Exhibit 4. It says, "Then they taped Chris's mouth up.  
3 Actually it was Riff who did this. Once Chris's mouth  
4 was taped up with the rag in it." Sorry, I should go  
5 back. It states, "They put some kind of rag or  
6 something in Chris's mouth. Riff stuffed it in, then  
7 they taped Chris's mouth up. Actually it was Riff who  
8 did this. Once Chris's mouth was taped up with the rag,  
9 Chris didn't make any other sounds." Do you see that?

10 A Yes.

11 Q And this was done when -- according to Fulton,  
12 when they drove the victim to the alley on the north  
13 side, right?

14 A Yes.

15 Q So before they put him in the alley -- before  
16 they drove to the alley with the victim inside a laundry  
17 bag, they hadn't placed anything -- any kind of cloth in  
18 his mouth, right? According to --

19 MR. FASONE: Object --

20 Q -- the statement.

21 MR. FASONE: Object to form. Go ahead.

22 A I didn't catch the last part of the question.

23 Q Sure. It was a long one. The rag was placed  
24 in the victim's mouth in the alley after the victim had  
25 been placed in the laundry bag at the scene of the

1 beating, correct?

2 A That's what John Fulton told me on March 21st  
3 of 2003.

4 Q And now I want to show you Mitchell's  
5 statement. Right, this is page -- Exhibit 11, page 32.  
6 And I'll make it bigger. They say, "I taped" -- or  
7 according to Mitchell, "I taped his arms, John taped his  
8 feet, Stick put a towel in his mouth and wrapped some  
9 tape around his face." Do you see that?

10 A Yes.

11 Q So is it fair to say when you were talking to  
12 Fulton and Mitchell, you did not know that it was the  
13 victim's own sock that was used to gag the victim; is  
14 that correct?

15 MR. FASONE: Object to form. Go ahead.

16 A I don't recall whether I had information about  
17 what the object was that your clients put in Christopher  
18 Collazo's mouth before they taped up his face. I don't  
19 know. I know that Fulton described it as a rag or  
20 something, and I see here that Mitchell describes it as  
21 a towel. But I don't remember what -- I don't remember  
22 having a specific -- I don't remember knowing exactly  
23 what it was at that time.

24 Q If you had known that it was the victim's sock  
25 that was placed in the victim's mouth, you would've

1 wanted to know why they were saying it was a rag or a  
2 towel that was being placed in the victim's mouth,  
3 correct?

4 MR. FASONE: Object to form, calls for  
5 speculation. Go ahead.

6 A It -- it's hard for me to say what I would  
7 have wanted -- what I would have wanted to know if I had  
8 known something that I don't think I knew.

9 Q Right. Well --

10 A It's -- it's a bridge I'm having a hard time  
11 getting across.

12 Q Well, let me ask it this way. Fulton didn't  
13 tell you that they placed anything in the victim's mouth  
14 at the scene of the beating, right?

15 A I think he said they put the rag or he -- he  
16 -- I don't think he was clear about what it was, a rag  
17 or something in -- in Collazo's mouth later.

18 Q Right. And so he didn't tell you that after  
19 they placed the victim in a really big laundry bag at  
20 the scene of the beating, they then took the victim out  
21 of the laundry bag, removed his shoe, removed one of his  
22 socks, placed the sock in the victim's mouth, and then  
23 placed the laundry bag back over the victim, correct?

24 MR. FASONE: Object to form. Go ahead.

25 A I don't recall him saying those things, no.

1 Q And if he told you that you would've  
2 documented it, right?

3 A Yes.

4 Q So do you have any explanation for how the  
5 victim's sock got in his mouth if Fulton and Mitchell  
6 and Shaw placed the victim in a laundry bag at the scene  
7 of the beating?

8 MR. FASONE: Object to form, foundation, calls  
9 for speculation. Go ahead.

10 A I wasn't there when all of this happened, so I  
11 can't say for sure.

12 Q Well, do you have any explanation whatsoever?  
13 Even if you can't say for sure.

14 MR. FASONE: Same objection. Go ahead.

15 A It's -- it's really -- it's really because I  
16 wasn't there when the beating and abduction happened  
17 that I can't give you details about what -- what  
18 Mitchell and Fulton did. And Shaw.

19 Q You -- you know, we talked last time about  
20 looking for corroboration, right?

21 A Yes.

22 Q And so one thing to corroborate the statement  
23 would be if there was a towel or a rag, something other  
24 than the victim's own sock, placed in the victim's  
25 mouth, right?

1 MR. FASONE: Object to form. Go ahead.

2 A So you're asking me if a towel or rag had been  
3 found in the victim's mouth, would that have been  
4 corroboration for the statements that Fulton and  
5 Mitchell made?

6 Q Yeah.

7 A Yes.

8 Q And if it was the victim's own sock in his  
9 mouth, then that would be a discrepancy between the  
10 crime scene facts and the statements provided to you by  
11 Fulton and Mitchell, right?

12 MR. FASONE: Object to form. Go ahead.

13 A Not necessarily because Fulton's recollection  
14 of the cloth object stuffed into Collazo's mouth was  
15 vague. He said it was a rag or something. An old sock  
16 could look like a rag in the dark in the heat of the  
17 moment when you're killing someone and stuffing a sock  
18 or a rag in their mouth. So I didn't ascribe any -- any  
19 major significance to Fulton's lack of precision in  
20 recalling what was stuffed in Collazo's mouth.

21 Q Did Fulton tell you that they removed the  
22 victim's shoe and removed one of his socks?

23 MR. FASONE: Objection, asked and answered. Go  
24 ahead.

25 A No.

1 Q And so you think that rag or towel is  
2 interchangeable with the victim's own sock when you're  
3 looking at corroboration for the statement; is that a  
4 fair --

5 MR. FASONE: Objection, that completely  
6 mischaracterizes his testimony. Go ahead, you can  
7 answer.

8 A The information I was operating on because I  
9 was not present as an eyewitness when the abduction, the  
10 beating and the stuffing of the rag or sock or towel in  
11 Collazo's mouth, I was not present when -- when that  
12 happened. The information I was operating on was being  
13 provided by John Fulton and Anthony Mitchell and I was  
14 accurately summarizing what they were telling me. So --  
15 so I was not -- I was not changing what they were saying  
16 to fit what the other was saying. I was not changing  
17 what -- what -- was not changing my summary of what  
18 Fulton was saying to match what Mitchell was saying or  
19 vice versa. Nor was I changing my summary of what  
20 either of them said to match other facts in the case. I  
21 was just accurately summarizing what they told me.

22 Q Right. So I'm not asking you if you were  
23 changing the facts or changing the stories, you  
24 understand that, right?

25 A I guess I don't --

1           MR. FASONE: That's not a question you need to  
2 -- it's not a question you need to answer.  
3 Russell, you have a job to be precise with your  
4 questions and you're not doing it and you're  
5 creating confusion on purpose. And now I think you  
6 are purposely trying to extend this deposition to  
7 the end because of the way you're doing this. So  
8 there's no need to argue with the witness that is  
9 completely unnecessary. If you have questions for  
10 the witness, just ask precise questions so we can  
11 finish this up.

12 BY MR. AINSWORTH:

13 Q So Mr. Rubinstein, I'm going to ask you to  
14 answer my questions, and questions that I'm asking are  
15 not other questions, okay?

16           MR. FASONE: He has been doing that.

17 Q Well, you know, we have a transcript and we  
18 know what the questions were and what the answers are,  
19 and so we can go through and look and you'll see what I  
20 -- but I'm really focused on this sock, towel, rag thing  
21 and I'm curious. Are you saying that the fact that the  
22 victim's own sock was in his mouth as opposed to a rag  
23 or a towel, is it your testimony here today that in your  
24 opinion that that is not a discrepancy between the crime  
25 scene facts and the statements by Mitchell Fulton?

1 MR. FASONE: Object to form,

2 mischaracterization. Go ahead.

3 A It's not necessarily a discrepancy because  
4 Fulton's statement to me -- when Fulton spoke to me on  
5 March 21st, he did not identify in a definite way what  
6 it was that was put into Collazo's mouth. He said a rag  
7 or something. And so I don't -- if there's an  
8 inconsistency there, it's a minor inconsistency in -- in  
9 a detail.

10 Q If Fulton or Mitchell had told you that they  
11 had stolen anything from the victim, you would've  
12 documented that, correct?

13 A Yes.

14 MR. FASONE: Object to form.

15 Q Did either Fulton or Mitchell tell you that  
16 they pulled the victim's pants down before setting his  
17 body on fire?

18 A I don't recall either one of them telling me  
19 that.

20 Q Did either Fulton or Mitchell tell you that  
21 the victim, on a night where it was three degrees below  
22 0, was wearing a T-shirt?

23 A I don't recall. But again, to be certain in  
24 my recollection of what Mitchell told me, I would have  
25 to look at the transcript of his video statement. And

1 to be certain about what Fulton told me I would have to  
2 look again to refresh my recollection at the -- the memo  
3 that I wrote in March of 2003.

4 Q All right. I'm -- I want to show you -- I'm  
5 going to share in the chat what we'll mark as Exhibit  
6 number 12. All right. So what I'm showing you marked  
7 as Exhibit number 12 is three documents Bates numbered  
8 City Fulton Mitchell 911, 920, and 921. Have you seen  
9 these before, sir?

10 (EXHIBIT 12 MARKED FOR IDENTIFICATION)

11 A Not that I recall.

12 Q All right. So these are crime scene  
13 photographs of the victim. Do you see how the victim in  
14 the photograph is depicted wearing a short sleeved  
15 shirt?

16 A Yes, it -- can you zoom in a bit more? I  
17 can't see.

18 Q Yeah.

19 A I've got glasses on and I still can't see it  
20 so well.

21 Q I'm showing you the third page of Exhibit  
22 number 12. Do you see that, sir?

23 A Yes.

24 Q All right. So do you see the victim's exposed  
25 arm and what appears to be a short sleeve shirt there?

1 A Yes.

2 Q And the victim's pants are pulled down  
3 exposing the victim's underwear?

4 A I -- I -- it looks like the pants are  
5 partially down. The blue fabric in the center of the  
6 photo, I can't really tell what that is, whether it's  
7 shorts or underwear or something else.

8 Q Sure. But the outer -- the jeans that are  
9 depicted in the photograph are pulled down on the  
10 victim, right?

11 A To about mid-thigh it looks.

12 Q Did Fulton or Mitchell say anything about the  
13 victim having his pants pulled down and not wearing  
14 anything longer than a t-shirt on a day that was  
15 bitterly cold and he was getting off a bus?

16 MR. FASONE: Objection. Form, argumentative.

17 Go ahead.

18 A I don't recall details from either Fulton or  
19 Mitchell about Christopher Collazo's attire that day.

20 Q So when you talked to Anthony Mitchell, you  
21 wanted to know what time this murder occurred because of  
22 the discrepancy about Fulton's alibi, right?

23 MR. FASONE: Object to form. Go ahead.

24 A When I talked to Anthony Mitchell, I wanted to  
25 hear what he -- what he was willing to say to me. I

1 didn't have -- I didn't have a preconceived notion of  
2 what I wanted him to say or what he would say. I was  
3 listening to what he had to tell me. And so I don't  
4 think it's right to say that I -- I wanted him to say  
5 something or needed him to say something or tried to get  
6 him to say something. I -- I was -- I was listening to  
7 his statements, not crafting his statements or trying to  
8 move his statements in one direction or another.

9 Q Mr. Rubinstein, did you want to know when the  
10 murder happened?

11 MR. FASONE: Asked and answered. Go ahead.

12 A If that was -- if that was a fact, that could  
13 be gathered from the totality of the evidence, yes. But  
14 the precise moment when a homicide occurs is something  
15 that's not necessarily knowable in the real world.

16 Q Just answer my question. All I'm trying to  
17 find out is --

18 MR. FASONE: He did. He answered your  
19 question.

20 Q Please, Mr. Gainer. Did you or did you not --

21 MR. FASONE: No, no, please. No, no, no. No  
22 please. You can't argue with the witness. You  
23 don't get to make speeches, Russell. That's not  
24 how this works. He answered your question. If you  
25 don't like the answer, ask a better question.

1 BY MR. AINSWORTH:

2 Q Mr. Rubinstein and only Mr. Rubinstein, did  
3 you want to know what time the murder happened when you  
4 were talking to Anthony Mitchell?

5 MR. FASONE: Objection, asked and answered.

6 A I wasn't sure whether Anthony Mitchell would  
7 be able to tell me that.

8 Q I -- I don't -- I'm not asking you what  
9 Anthony Mitchell might -- might know or what he'd be  
10 able to say. Just my question. My question is, did  
11 you, so only you, did you, Jake Rubinstein, want to know  
12 what time the murder happened when you talked to Anthony  
13 Mitchell?

14 MR. FASONE: Objection, asked and answered. Go  
15 ahead.

16 A When I talked to Anthony Mitchell, my goal was  
17 to find out what he was willing to tell me. And if that  
18 gave information that helped to identify the time or  
19 approximate time of the murder, then that would be  
20 useful for information. But I didn't go into the  
21 conversation with Anthony Mitchell with a preconceived  
22 idea of what I was going to get from him or what he was  
23 going to tell me, or what I would know at the end of the  
24 conversation.

25 Q Why would it be useful information to know

1 what time the murder happened?

2 A I'm sorry, the last part of your question

3 trailed off. I didn't catch it.

4 Q Why would it be useful information to know

5 when the murder happened?

6 MR. FASONE: Objection, asked and answered. Go  
7 ahead.

8 A Because knowing when a murder happened, and

9 again, it's -- it's difficult in many homicides to know

10 that with any precision but knowing let's say

11 approximately when a homicide took place could be a

12 landmark in time that helps the investigators, the

13 police who were working on this, understand the overall

14 course of events, the timeline, what happened when.

15 Q And you knew when you talked to Anthony

16 Mitchell on March 21st, that John Fulton was claiming he

17 had an alibi for a portion of the evening of March 9th

18 into the morning of March 10, 2003, right?

19 A When I -- no, not -- that's not really

20 correct, because by the time I talked to Mitchell in the

21 late morning on March 21st, John Fulton had already told

22 me that although he was at the University of Chicago

23 Hospital on the evening of March 9th of 2003, he left at

24 some point. And so at that point, John Fulton had --

25 was no longer claiming an alibi for the -- for the

1 events for the murder.

2 Q Right. Let's talk about that, because it --

3 you know, I'm going to show you Exhibit number 4 again,

4 your murder memo. And so what Fulton told you was, and

5 then looking at page 4 of Exhibit 4, "Fulton drove

6 Yolanda to the University of Chicago Hospital that day

7 because she was sick and wanted to go to the emergency

8 room. He got there somewhere around 8:45 or 9:00 p.m.

9 Fulton and Yolanda waited in the waiting room for a

10 while, but he is not sure how long. Fulton then left

11 and went on the block in his old neighborhood around

12 79th and Crandon." Do you see that?

13 A Yes.

14 Q Okay. So he went on the block after dropping

15 off Yolanda, around 8:45 or 9:00, correct?

16 A That's what he said.

17 Q And you saw the ER record that showed that

18 Yolanda was taken to the ER at, or signed in the ER at

19 8:45 p.m., right?

20 A Was that in --

21 MR. FASONE: Objection. Foundation. Go

22 ahead.

23 A Was that -- was that an exhibit at the first

24 part of the deposition? I believe it was, but I -- I

25 don't have a -- I don't have a clear recollection of

1 that emergency department record.

2 Q All right. Well, in any event, moving down to  
3 page 5 of Exhibit 4, "Fulton then told you that after  
4 they set the box on fire," paraphrasing, "Fulton drove  
5 Stick and Riff back to the block, somewhere near 79th  
6 and Luella or Crandon. He then went to the hospital and  
7 picked Yolanda up. He didn't say anything to her about  
8 what had happened." Do you see that, sir?

9 A Yes.

10 Q All right. And so Yolanda viewed the video of  
11 the tape that was retrieved from the University of  
12 Chicago Hospital, right? With Detective Winstead?

13 A I do remember Yolanda Henderson and Winstead  
14 looking at videos together.

15 Q And you saw them?

16 A But I don't -- I -- I don't know what -- what  
17 -- I'm not sure I can say what videos they were looking  
18 at together or what she said or what she saw, but I do  
19 recall seeing the two of them looking at videos  
20 together.

21 Q And -- yeah. And you were there watching them  
22 -- observing them at a couple of points watching videos  
23 together, right?

24 MR. FASONE: Objection, asked and answered. Go  
25 ahead.

1 A My recollection now is just of seeing Winstead  
2 and Yolanda Henderson looking at videos together. That's  
3 all that I'm coming up with in terms of a recollection  
4 of that, that part of the -- that part of my work on  
5 this case.

6 Q All right. And let me put in the chat what  
7 we'll mark as Exhibit number 13. All right. So this is  
8 a CPD Supplementary Report reported by Rolston. And I'm  
9 going to direct you to page -- oh goodness. Oh, this --  
10 that's the -- I'm -- I'm so sorry. I put on the screen  
11 the wrong report. I meant to -- all right. So Exhibit  
12 13 is a supp report, Chicago Police Department  
13 Supplementary Report by Edward Winstead. It's Bates  
14 number Fulton Mitchell 4897 through 4903. And I'm going  
15 to direct your attention to page 6 of Exhibit 13. And  
16 it references, "On second watch, March 20, 2003,  
17 Detectives Winstead and Rolston visited Mitchell  
18 hospital security. The Mitchell hospital emergency  
19 service log indicated that Yolanda Henderson signed in  
20 at 845 hours on March 9, 2003. She was called for  
21 treatment at 12:50 a.m. and there was no response from  
22 her. There was surveillance film from the emergency  
23 room camera, a copy was secured." You were present for  
24 the retrieval of that video from the hospital, right?

25 (EXHIBIT 13 MARKED FOR IDENTIFICATION)

1 A Yes.

2 Q And then it says on March -- going back to  
3 Exhibit 13, page 6, it says, "On March 21st, Detective  
4 Winstead picked up Yolanda Henderson and transported her  
5 to Area 1. She had drawn a reasonably accurate diagram  
6 of the emergency room waiting area. She explained how  
7 she'd been pushed in a wheelchair by Fulton to triage.  
8 The surveillance tape showed wheelchair movement. He  
9 wheeled her to a low railing before they got seats in  
10 the back row. Of note, we were told that the time  
11 indicated on the video might be off as much as ten  
12 minutes, plus or minus the real time. Detective  
13 Winstead and Yolanda watched the video. Even though  
14 faces were not distinct, Yolanda was accurate in  
15 foretelling what action or actions would come next from  
16 the two people she claimed were her and Fulton. It was  
17 approximately 10:30 when they believed Fulton left the  
18 emergency room. It was 1118 hours on the tape when  
19 Yolanda left the emergency room." Do you see that, sir?

20 A Yes.

21 Q So according to Yolanda, she was picked up at  
22 11:20 or so on March 9th, it could be ten minutes  
23 earlier or later. Is that fair to say, according to  
24 what she told Detective Winstead?

25 MR. FASONE: Object to foundation, go ahead.

1 A Well, it doesn't say picked up in this report.  
2 It says it was 2318 hours on the tape when Yolanda left  
3 the emergency room.

4 Q Well, she doesn't say that she had to wait a  
5 long time. She said that, "Yolanda now believed that  
6 Fulton dropped her off at their apartment and didn't  
7 come up." Do you see that?

8 A "Yolanda was surprised that her exit was an  
9 hour earlier than she originally remembered. Yolanda  
10 now believed that Fulton dropped her off at their  
11 apartment and didn't come up." Okay. I see that.

12 Q All right. So if Yolanda was dropped off at  
13 the hospital at 8:45 p.m. and then picked up at 11:30,  
14 somewhere in -- 11:20, 11:30, somewhere in that time,  
15 how would there be sufficient time for Fulton, Mitchell,  
16 and Shaw -- well, Fulton to drive, pick up Mitchell and  
17 Shaw on 79th Street, then drive to the north side,  
18 commit the beating, place the victim in the bag, drive  
19 to the alley, drive to the gas station, and then go to  
20 the alley in Peoria and set the body on fire?

21 MR. FASONE: Object to form, foundation, calls  
22 for speculation. Go ahead.

23 A So you're asking me if, in my opinion, it's  
24 possible for those things to have occurred between 8:45  
25 and 11:18 p.m.?

1 Q Yes, that's right.

2 A I can't say for sure. That is close to three  
3 hours' time, so a lot can happen in three hours. But I  
4 wasn't there, so I don't know.

5 Q All right. But Fulton told you that he picked  
6 up Yolanda from the hospital, right?

7 MR. FASONE: Objection. Foundation as to  
8 when. Go ahead.

9 A Well, I -- I spoke to Fulton three times. And  
10 in one of -- in one of or more of those conversations he  
11 talked about taking Yolanda to the hospital, Yolanda  
12 Henderson to the hospital, yes.

13 Q But when he confessed to you on March 21st, he  
14 told you that after he set the victim on fire, he then  
15 picked up Yolanda from the hospital. Well, he dropped  
16 off Stick and Riff and then picked up Yolanda from the  
17 hospital, right?

18 A Yes.

19 Q Did you have any questions for John Fulton  
20 about how the fire was still going on at 3:00 a.m. if he  
21 was picking up Yolanda somewhere around 11:30 p.m.?

22 MR. FASONE: Objection to form, foundation. Go  
23 ahead.

24 A I don't recall asking him that question or  
25 those questions.

1 Q Did you want to know how the fire was still on  
2 fire at 3:00 a.m. if they were supposed to have accosted  
3 the victim at like 9:00 p.m.?

4 MR. FASONE: Object to form, argumentative. Go  
5 ahead.

6 A They -- they burned the body much later. I  
7 don't know about much later. They burned the body at  
8 some time later after they accosted Christopher Collazo  
9 and -- and beat him and put him in the car. So  
10 9:00 p.m. to 3:00 a.m. is not really the right time  
11 frame.

12 Q Well, how is the -- I mean, do you have any  
13 explanation for how the body was still on fire at  
14 3:00 a.m. if the events described by Mitchell and Fulton  
15 were supposed to have begun at 8:45 or 9:00 p.m. that  
16 evening?

17 MR. FASONE: Object to form, foundation, calls  
18 for speculation, argumentative. Go ahead.

19 A The question implies that the burning of the  
20 body happened shortly after 9:00 p.m. which I don't  
21 think it did.

22 Q Well, what if it happened at 11:30 or  
23 11:00 p.m.? Do you think, was the -- do you think the  
24 body was still burning at 3:00 a.m. if a cardboard box  
25 was set on fire at 11:00 or 11:30 p.m.?

1           MR. FASONE: Object to form and foundation. Go  
2 ahead.

3       A You know, that's more of a science question  
4 that I can't answer or I'm not qualified to answer.  
5 Whether some combination of cardboard, human flesh,  
6 clothing could be still smoldering or burning in some  
7 fashion for x number of minutes after the fire was  
8 started, that I can't answer.

9       Q All right. Well, in your -- was it your  
10 belief that the fire would still be burning hours, you  
11 know, two or three hours after it was set so that it  
12 would be discovered at 3:00 in the morning?

13      MR. FASONE: Same objection. Go ahead.  
14     A I -- I didn't have a belief about that one way  
15 or the other. In 2003.

16     Q Did you ask Anthony Mitchell when the murder  
17 happened?

18      MR. FASONE: Objection, asked and answered. Go  
19 ahead.

20     A I don't think I asked him when the murder  
21 happened. I certainly would not have phrased it that  
22 way. What I asked Anthony Mitchell was more along the  
23 lines of, "Tell me what happened." And then he told me  
24 what happened.

25     Q All right. And did you tell him -- did you

1 ask him when the events happened?

2 A I don't recall -- I don't recall that specific  
3 question. I just can't recall whether the -- deep  
4 specific questions about when, I don't recall asking. I  
5 just don't know. I may have, but I don't know.

6 Q Is there any reason why you wouldn't have  
7 asked Anthony Mitchell when this happened?

8 MR. FASONE: Objection, argumentative. Go  
9 ahead.

10 A Listening to what he had to say and hearing  
11 him describe the sequence of events combined with the  
12 other information that I knew about the case may have  
13 made the question, "When did these things happen?" A  
14 -- a question I didn't need to ask him. Also, some  
15 people who, in my experience, in Felony Review, people  
16 who are involved in committing crimes, committing  
17 murders, typically are not tracking time in a -- in an  
18 accurate or careful way.

19 Q And so that means that you wouldn't ask  
20 Mr. Mitchell when the murder happened because --

21 A If I asked --

22 Q -- you thought that he wouldn't be specific in  
23 his response?

24 A If I asked him --

25 MR. FASONE: Objection. Hold on. Hold on,

1 Jake.

2 A Yep.

3 MR. FASONE: Objection, argumentative, form,  
4 mischaracterization. Go ahead. You can answer.

5 A If I asked him about timing, the question most  
6 likely would've been along the lines of, "When do you  
7 think this happened? Or when do you think that  
8 happened? Or around what time was this?" Those kinds  
9 of questions.

10 Q Okay. And what did Anthony Mitchell tell you?

11 A Well, I'm not saying I asked him those  
12 questions. I'm saying that if I were to ask someone in  
13 Anthony Mitchell's position questions to try to get an  
14 orientation on time, they would be questions along those  
15 lines. But I don't recall specific questions that I  
16 asked Anthony Mitchell. My recollection of what Anthony  
17 Mitchell said to me when I talked to him on March 21st  
18 was -- was -- my recollection is me saying, "Tell me  
19 about what happened." And then him talking. There were  
20 some -- I'm sure I interjected some questions here and  
21 there, but -- but what I mostly remember is listening.

22 Q Right. And you knew from talking to John  
23 Fulton, that these events had to happen in-between him  
24 dropping off Yolanda, waiting at the hospital, leaving  
25 the hospital, and then returning to pick up Yolanda,

1 according to John Fulton, right?

2 MR. FASONE: Object to form. Go ahead.

3 A So the beginning part of your question was, "I  
4 knew." And I can't say that I knew anything at that  
5 point. My -- what -- what I was hearing from John  
6 Fulton I was listening to and then ultimately  
7 summarizing, but I wasn't taking every detail that John  
8 Fulton or Anthony Mitchell told me as a proven or  
9 definite fact. So I can't say what I knew or didn't  
10 know.

11 Q Do you think that John Fulton was lying about  
12 the time frame of when the murder happened?

13 MR. FASONE: Object to form, foundation. Go  
14 ahead.

15 A I don't recall forming any opinion about  
16 whether he was lying or not about the time frame or  
17 whether he was mistaken about the time frame or accurate  
18 about the time frame, because getting the time frame  
19 wrong doesn't necessarily mean lying, it could be  
20 mistaken. But I wasn't -- I wasn't reaching conclusions  
21 or judgements about whether he was or was not lying  
22 about the time frame.

23 Q Did it enter into -- did you have any  
24 conversation with the detectives at all about how long  
25 the body might have been on fire before it was

1 discovered at 3:00 a.m. or thereabouts on fire?

2 A I don't recall a discussion about that with  
3 the detectives.

4 Q Did you or the detectives have any discussion  
5 about, "Gee, this time frame doesn't make sense. If  
6 Yolanda's being picked up at around 11:30 p.m., how is  
7 the body still on fire at 3:00 a.m.?"

8 MR. FASONE: Objection, argumentative. Go  
9 ahead.

10 A I don't recall a conversation like that with  
11 the detectives.

12 Q And nothing to that effect, just be clear,  
13 right?

14 A Pardon me?

15 Q And you don't recall any conversation to that  
16 effect? Talking about the time between the fire being  
17 set and when it was discovered, correct?

18 MR. FASONE: Objection, asked and answered. Go  
19 ahead.

20 A I just don't recall.

21 Q So Mitchell told you that they beat the  
22 victim, put him in the trunk, drove to a gas station,  
23 and then drove to an alley, right?

24 MR. FASONE: Objection, asked and answered. Go  
25 ahead.

1 A I believe that is accurate in general terms,  
2 but for a -- a definite answer, reliable answer, I'd  
3 have to refresh my recollection again with the  
4 transcript of the video statement. The transcript of  
5 Mitchell's video statement is not something I reviewed  
6 in preparation for the deposition. So I don't have a  
7 -- a clear recollection of the details, other than  
8 what you've refreshed my recollection with today.

9 Q So just to, you know, go over what I showed  
10 you before, this is page 29 of the -- of Exhibit 11.

11 Sorry. So this starts with them picking Chris up,  
12 putting him in the trunk, and then driving away from  
13 Rockwell and Foster, paraphrasing, correct?

14 A "Answer: We -- all three of us picked Chris  
15 up. We put him in the trunk, closed the trunk." Okay.  
16 I see that answer. Lines two through five.

17 Q And then Mitchell is asked, "How far did you  
18 guys drive before you stopped?" "We drove about three  
19 blocks before we stopped at a Citgo gas station by  
20 Dominicks." Do you see that?

21 A Yes, I do.

22 Q All right. And then they're at the gas  
23 station and then it says, "Where did Stick put the gas  
24 can then?" "He set the gas can on the ground, put the  
25 rest of the gas in the car, then he just set the gas can

1 on his lap so it wouldn't leak or nothing so the car  
2 wouldn't smell like gas." Question: "Right. And it --  
3 he didn't put it in the trunk?" Answer: "No, sir." "He  
4 didn't want to open the trunk at the gas station,  
5 right?" "No, sir." "Okay. Then where did you guys  
6 drive?" We got back on Foster, heading the same  
7 direction toward Lake Shores Drive -- Lake Shore Drive.  
8 We stopped again maybe four or five blocks after the gas  
9 station on Paulina." Do you see that?

10 A Yes.

11 Q And that's where they stop at the gas -- at  
12 the alley, correct?

13 A Well, correct according to Mitchell's  
14 statement.

15 Q Right. And Fulton told you that they went to  
16 the alley before the gas station, right?

17 MR. FASONE: Object to form. Go ahead.

18 A I would have to go back to Fulton's statement  
19 on that.

20 Q Okay. Showing you what we previously marked  
21 as Exhibit number 4. All right. So this is page 5 of  
22 Exhibit 4. "Remember at the scene of the crime,  
23 according to Fulton, they put the victim in the laundry  
24 bag. He fit all the way in. They all three of them put  
25 Chris into the trunk and they drove to an alley

1 somewhere on the north side." Do you see that?

2 A Yes.

3 Q And according to Fulton, in the alley they  
4 took the victim all the way out of the trunk and put him  
5 on the ground, right?

6 A Yes.

7 Q And, you know, Mitchell said in the alley, "We  
8 didn't take him out of the trunk, we just kind of  
9 shifted his body into the plastic bag while he was still  
10 in the trunk." Right?

11 A Yes.

12 Q Did you note that discrepancy when you were  
13 talking to Mitchell after taking Fulton's confession?

14 MR. FASONE: Object to form.

15 A What do you mean by note?

16 Q Did you realize that Fulton was describing  
17 something in the alley different -- excuse me. Let me  
18 strike that. Did you realize that Mitchell was  
19 describing something happening in the alley that was  
20 different from what Fulton had told you? That is,  
21 taking -- keeping the victim in the trunk and not taking  
22 him all the way out versus Fulton saying they took the  
23 victim all the way out of the trunk to tape him up?

24 A Yes, I noticed that difference.

25 Q Did you ask Mitchell anything about, "Well,

1 did you guys take him out and place him on the ground?"

2 Or to try and, you know, in addition to putting him into  
3 the bag while he was still in the trunk?

4 MR. GAINER: Object to form. Go ahead.

5 A I don't think I asked Mitchell that, no.

6 Q Did you ask Mitchell any questions to try to  
7 find out whether there was a discrepancy between his  
8 description of what happened in the alley and Fulton's  
9 description of what happened in the alley?

10 MR. GAINER: Object to form. Go ahead.

11 A There was a difference between Fulton's  
12 description of what happened -- there were differences  
13 in details between -- some details between Fulton's  
14 description of events and Mitchell's description of  
15 events.

16 MR. AINSWORTH: Could you please read back the  
17 question, Sydney?

18 COURT REPORTER: Yes, one moment.

19 (REPORTER PLAYS BACK REQUESTED  
20 TESTIMONY)

21 A I didn't need to ask him questions to find out  
22 whether there was a difference between Fulton's account  
23 and Mitchell's account because there was a difference  
24 between their two accounts.

25 BY MR. AINSWORTH:

1 Q I guess what I mean to say -- I appreciate  
2 that clarification. Did you ask Mitchell any questions  
3 to see if you could -- if he could explain the  
4 difference away, such as, "Well, we put the victim in  
5 the bag while he was still in the trunk, but then we  
6 took him out of the bag, or out of the trunk in order to  
7 take him up," or something like that? Did you ask him  
8 any questions to try and clarify if there really was a  
9 discrepancy between the two accounts?

10 A No. That would be feeding information to  
11 Mitchell in an effort to get him to change his story to  
12 match that of Fulton and I did not do that.

13 Q How would that be feeding information if  
14 you're simply trying to find out what happened in the  
15 alley? How would that be feeding information?

16 MR. GAINER: Objection, argumentative. Go  
17 ahead.

18 A If Mitchell gave me a different account on --  
19 Mitchell's account of certain details was different than  
20 Fulton's account of certain details. I did not tell  
21 Mitchell what Fulton says -- said in an effort to get  
22 him to change his story to match Fulton's or vice versa.

23 Q I'm not suggesting you're doing it in an  
24 effort to make their stories match up. I'm just  
25 wondering, you know, and not suggesting you told

1 Mitchell what Fulton had said. But simply asking a  
2 question to find out from Mitchell whether he had done  
3 anything else in the alley to see if his account could  
4 be squared with Fulton's account of what happened in the  
5 alley.

6 MR. GAINER: Object to form. Asked and  
7 answered. Go ahead.

8 A I don't recall asking a question along the  
9 lines of what you just said.

10 Q And, why didn't you ask Mitchell questions to  
11 try and find out if there was some way to -- that -- if  
12 there's some way that Mitchell's account might be  
13 consistent with Fulton's account of what happened in the  
14 alley?

15 A I was not --

16 MR. GAINER: Objection. Go ahead.

17 A I was not trying to harmonize their two  
18 stories. I was listening for the purpose of accurately  
19 summarizing what each individual told me.

20 Q In any event, on page 5 of Exhibit 4, it says,  
21 you know, "There -- they drove to an alley, and then  
22 they drove to a gas station." Or they then drove to a  
23 gas station." Do you see that?

24 MR. GAINER: Objection, asked and answered. Go  
25 ahead.

1 A Yes.

2 Q All right. So according to Fulton, they went  
3 to a gas station after they drove to the alley, right?

4 A Yes.

5 Q And Mitchell told you the opposite, that they  
6 went to the gas station and then the alley, right?

7 A Yes. He sequence -- Mitchell's sequence of  
8 events was somewhat different than Fulton's sequence of  
9 events.

10 Q Did you note -- did you realize that there was  
11 a discrepancy between what Mitchell was telling you  
12 about the sequence of events versus what Fulton had told  
13 you about the sequence of events when you were talking  
14 to Mitchell?

15 MR. GAINER: Object to form. Go ahead.

16 A Yes. I noticed differences, de -- differences  
17 in the details in each of their respective accounts of  
18 what happened that night.

19 Q Well, specifically the detail about the  
20 sequence of events in which they -- places they went  
21 that night, right?

22 A Yes.

23 Q And, you noted the discrepancy between the  
24 descriptions that Mitchell gave and Fulton gave of when  
25 and where the victim was placed in a really big bag,

1 right?

2 MR. GAINER: Objection, asked and answered  
3 multiple times. Go ahead.

4 A Yes, I -- I noted the differences in their  
5 accounts of what happened when at various points.

6 Q Did you talk with anyone about those  
7 discrepancies? I mean, back in March of 2003?

8 A Did I talk with anyone about those  
9 discrepancies? I don't recall having a conversation  
10 with anyone about those discrepancies, but it may have  
11 been something I discussed with the detectives or Nick  
12 D'Angelo.

13 Q And do you have any recollection of talking to  
14 any of the detectives or Nick D'Angelo about the  
15 discrepancies between Mitchell's and Fulton's  
16 statements?

17 A In general terms, I recall talking to them and  
18 I-- in general terms, I recalling -- I recall talking  
19 to detectives and Nick D'Angelo about the fact that  
20 Fulton's account and Mitchell's account, generally  
21 speaking in broad terms, were consistent, but that there  
22 were differences in certain details.

23 Q And what details did you reference were  
24 different in that conversation?

25 A I don't remember what specific details.

1 Q Did you call for a videographer to take -- to  
2 record Fulton's statement before you talked to Mitchell?

3 A I don't remember.

4 Q Any reason why you would delay calling for a  
5 videographer before talking to Mitchell?

6 MR. GAINER: Calls for speculation. Go ahead.

7 A I don't recall if or when we called for a  
8 videographer to come out and take a statement from  
9 Fulton.

10 Q Did you ever call for a videographer to take  
11 a --

12 A I -- I --

13 Q -- statement --

14 A -- don't remember.

15 MR. GAINER: Asked and answered, like, three  
16 questions ago.

17 MR. AINSWORTH: Mr. Gainer, I don't think you  
18 understand what asked and answered means. But go  
19 ahead.

20 MR. GAINER: You asked -- I know exactly what  
21 it means. You asked the exact same question three  
22 questions ago. Exactly.

23 BY MR. AINSWORTH:

24 Q No. I asked before he talked to Mitchell.

25 Now, I'm asking if he ever did at any point in time.

1 Those are two completely different questions. All  
2 right. So Mr. Rubinstein, you were sued by Fulton and  
3 Mitchell back in, you know, 2004, correct, thereabouts?

4 A Sued by Fulton and Mitchell in 2004? I was  
5 named as a defendant in a lawsuit brought by, I don't  
6 remember if it was Fulton and Mitchell or just Fulton,  
7 and I don't recall the year.

8 Q Okay. But it was before the -- you were sued  
9 before the criminal trial, right?

10 A I don't remember the sequence of lawsuit  
11 versus criminal trial.

12 Q Can you tell us what the disposition of that  
13 lawsuit was?

14 A The -- the lawsuit in -- in which I was named  
15 as a defendant?

16 Q Yes.

17 A No, I can't.

18 Q Do you know how it resolved?

19 A The lawsuit as a whole?

20 Q Yes.

21 A No.

22 Q Did you make any agreement as part of  
23 dismissing that lawsuit?

24 MR. GAINER: Objection. If you were  
25 represented by an attorney and this calls for

1 privileged information, do not disclose it --

2 THE WITNESS: I was.

3 MR. GAINER: -- because I do not understand  
4 the question. So if you could -- if you understand  
5 it, go ahead.

6 A No. What -- anything I did in relation to  
7 that lawsuit was done through my attorney which was the  
8 Civil Actions Bureau, the Cook County State's Attorney's  
9 Office.

10 BY MR. AINSWORTH:

11 Q Do you know that the lawsuit was dismissed?

12 A I know I was dismissed from the lawsuit.

13 Q How do you -- well, did you know --

14 A I don't --

15 Q -- that you were dismissed separate from the  
16 other defendants in the lawsuit?

17 MR. GAINER: Same objection with regard to  
18 privilege. Go ahead and answer, you understand  
19 what that means.

20 A What I know about the lawsuit, I know from  
21 conversations with my lawyer. I did not, for example,  
22 go to Pacer and look up court documents, and determine  
23 on my own what happened with the lawsuit. So what I --  
24 what I know about that earlier lawsuit, I know only from  
25 speaking to my lawyer.

1 Q Did you have to pay anything in order to have  
2 the lawsuit dismissed?

3 A No.

4 Q Did you have to sign any paperwork in order to  
5 have the lawsuit dismissed?

6 A No.

7 Q Did you provide any benefit of any kind to the  
8 plaintiffs in order to have that lawsuit dismissed?

9 MR. GAINER: Object to form. Go ahead.

10 A Did I provide any benefit to the plaintiffs in  
11 exchange for having the lawsuit dismissed? Agreeing to  
12 a voluntary dismissal of a case without a basis that  
13 could get the plaintiffs or their lawyers in trouble if  
14 they proceeded with it could be a benefit.

15 Q Did you agree to a voluntary dismissal?

16 A The -- the discussions between my lawyers and  
17 Plaintiff's lawyers are what resulted in a voluntary  
18 dismissal. I was not part of those discussions.

19 Q That's what I'm trying to find out. Did you  
20 give any benefit to the plaintiffs in exchange for  
21 having the lawsuit dismissed?

22 A What do you --

23 MR. GAINER: Object to form. Asked and  
24 answered. Go ahead.

25 A What do you mean by give any benefit?

1 Q Did you -- so, if not money, did you offer any  
2 comp- -- any other type of compensation? Did you  
3 provide an agreement to do or not do something in  
4 exchange for having this lawsuit dismissed? Did you  
5 provide any kind of benefit of any type whatsoever?

6 A That would be a question you would have to ask  
7 the lawyers who represented me in that case.

8 Q I'm not asking what -- did you do anything?  
9 Not -- you know, they're acting for you, but, like, did  
10 you have to sign anything? Did you impair yourself in  
11 any way in order to get the lawsuit dismissed? Did you  
12 give any type of benefit to the plaintiffs?

13 MR. GAINER: Object to form. Go ahead.

14 A What I did in relation to the dismissal of the  
15 lawsuit was done through my attorneys. So there --

16 Q I see.

17 A I was not representing myself. I wasn't doing  
18 anything. The word do. It was my lawyers who were --  
19 who were representing me in that case and what happened  
20 was between them and the plaintiffs' lawyer or lawyers.

21 Q And so it's fair to say that you, as the  
22 client in that lawsuit, didn't have to do anything in  
23 order to have the lawsuit dismissed, right?

24 MR. GAINER: Object to form. Go ahead.

25 A I can't answer that without talking about

1 things that my lawyers and I discussed which I am not  
2 going to do. I am not going to waive that privilege.

3 Q Okay. Well, how about this? Is there any  
4 action you had to take in order to -- you know, apart  
5 from talking to your lawyers, is there any action you  
6 had to do in order to have the lawsuit dismissed?

7 A Again, I had a conversation with my lawyers  
8 about the voluntary dismissal, and I can't answer that  
9 question without telling you about that conversation,  
10 and I'm not willing to waive that privilege.

11 Q I'm not asking for any conversations you had.  
12 I don't want to know about any conversations you had. I  
13 just want to know if you took any -- are you saying that  
14 there are actions you took that are privileged?

15 MR. GAINER: That's not what he's saying.

16 That's not what he said.

17 Q Well, I -- I'm -- I just --

18 MR. GAINER: Go ahead.

19 A I -- I cannot think of a way to answer that  
20 question without telling you what my lawyers and I  
21 discussed, which I -- I'm not willing to do because of  
22 the privilege.

23 Q Did you take any action in order to have the  
24 lawsuit dismissed, such as signing anything, signing any  
25 paperwork that would be disclosed to other people?

1 MR. GAINER: Objection. Form. Go ahead.

2 A I don't recall whether I signed anything or  
3 not.

4 Q And so as you sit here today, can you tell me  
5 of any benefit that you provided either Mr. Fulton or  
6 Mr. Mitchell in exchange for having your lawsuit  
7 dismissed?

8 MR. GAINER: Objection, asked and --

9 Q In regards to that lawsuit.

10 MR. GAINER: -- answered. Go ahead.

11 A I would repeat the same answer I gave before.

12 Q Which is what?

13 A Which is that agreeing to allowing a voluntary  
14 dismissal to take place of a lawsuit that did not have -  
15 - did not have valid grounds and could have resulted in  
16 consequences for the plaintiffs or the plaintiffs'  
17 lawyers could be a benefit.

18 Q Did you --

19 A Beyond that -- I -- I'm sorry?

20 Q Did you agree to that voluntary dismissal?

21 MR. GAINER: He -- hold on a minute. He  
22 wasn't finished talking, Russell, and you  
23 interrupted him, and now we have an incomplete  
24 answer because you want to argue with him. So  
25 Jake, were you finished with your answer? It

1 didn't sound like you were.

2 THE WITNESS: I don't think so, but there was  
3 a point where I couldn't hear what Mr. Ainsworth  
4 was saying, so could we ask Sydney to read back the  
5 answer? Thank you, Sydney.

6 COURT REPORTER: Yeah, sure.

7 (REPORTER PLAYS BACK REQUESTED  
8 TESTIMONY)

9 A So I was starting to say, beyond that,  
10 anything I were to tell you about the circumstances of  
11 the voluntary dismissal would be information that I  
12 learned in confidence in a privileged fashion from my  
13 attorneys.

14 BY MR. AINSWORTH:

15 Q And I'm not talking about information from  
16 them. Like, did you agree to the voluntary dismissal of  
17 your lawsuit?

18 MR. GAINER: Objection, asked and answered. Go  
19 ahead.

20 Q I'm not saying did you tell somebody. I'm not  
21 saying did you have a conversation with your lawyer. I'm  
22 just saying, did you, in your mind, agree with the  
23 dismissal?

24 MR. GAINER: I just object to form. Go ahead.

25 A Yes.

1 Q Did you do anything in order to effectuate  
2 that agreement to the lawsuit? Or is that mostly  
3 privileged? And if it is --

4 A That would -- that -- that involves  
5 conversations I had with my lawyers.

6 Q All right. That's all I need to know. While  
7 you were at Area 1 on March 21st, you had a conversation  
8 with the lawyer representing John Fulton; is that right?

9 A Did I talk to him? I don't recall if I  
10 actually talked to him or I just knew he was there.

11 Q Well, I guess that's my question. Did you  
12 have any conversation with the lawyer?

13 A In -- it was Elliot Zinger. I don't remember  
14 if I talked to him or not on March 21, 2003. If we're  
15 in-between questions, can we take a washroom break,  
16 please? We've been going for about an hour 25.

17 MR. AINSWORTH: Sure.

18 MR. GAINER: Yeah. We've got ten minutes  
19 left.

20 THE WITNESS: Okay.

21 MR. GAINER: We'll --

22 THE WITNESS: Still need a -- still need a  
23 washroom break even --

24 MR. GAINER: All right. Let's go off the  
25 record.

1 THE WITNESS: -- with ten minutes left.

2 COURT REPORTER: Okay. We are off the record.

3 The time is 1:06.

4 (OFF THE RECORD)

5 COURT REPORTER: We are back on the record for  
6 the deposition of Jacob Rubinstein being conducted  
7 by videoconference. My name is Sydney Little.

8 Today is December 6, 2022 and the time is 1:13 p.m.

9 BY MR. AINSWORTH:

10 Q All right. I've put in the chat what we'll  
11 mark as Exhibit 14 to this deposition. This is a  
12 transcript from the trial on March -- April 28, 2006 and  
13 there's a -- sorry. It's not from the trial. It's from  
14 a pre-trial hearing. My apologies. And I want to show  
15 you a page that has some stipulations in it. This page  
16 N111 of the transcript, and it says, "Judge, it would be  
17 stipulated by and between the parties," make it bigger  
18 so you can read it, "that if called to testify, Jake --  
19 ASA Jake Rubinstein and ASA Judge McRay, McRay Judge,  
20 would both testify that during their involvement in the  
21 investigations of John Fulton and Mr. Mitchell that at  
22 no time did any detective inform them that John Fulton  
23 was brought down to the polygraph section or that John  
24 Fulton made any statements to an Officer Bartik." Do  
25 you see that, sir?

## 1 (EXHIBIT 14 MARKED FOR IDENTIFICATION)

2 A Yes.

3 Q Do you have any reason to disagree with that  
4 stipulation that no detective told you that John Fulton  
5 was brought to the polygraph section or that he made any  
6 statement to Officer Bartik?

7 MR. GAINER: Object to form. Go ahead.

8 A The question had a double negative and I don't  
9 -- I don't understand what the question is. It sounded  
10 like do I have any reason to not agree or to not  
11 disagree?12 Q Sure. Let me try it again. Do you agree that  
13 no detective -- you know, having seen this stipulation,  
14 do you agree that no detective told you that John Fulton  
15 was brought to the polygraph section or that John Fulton  
16 made a statement to an Officer Bartik?

17 A Yes, I agree.

18 Q And then I want to show you what we previously  
19 marked as Exhibit 1 to your previous deposition. This  
20 is the statement by Johnitta Griffin. So showing the  
21 first page of that just to orient you as Exhibit 1,  
22 Johnitta Griffin's statement. I will represent to you  
23 that, in the statement, there is no -- nothing in here  
24 saying that John Fulton was a member of a gang or doing  
25 bad things as a member of a gang. And so my question to

1 you is, you know, with that assumption which you just  
2 have to take my word for it because it's not in there,  
3 you know, and so I understand that you're having to  
4 assume it. But did Johnitta Griffin say anything to you  
5 about John Fulton being a gang member or doing bad  
6 things?

7 MR. GAINER: Object to form. Go ahead.

8 A Did Johnitta Griffin say anything to me about  
9 John -- well, that's two questions. The first question  
10 is did Johnitta Griffin tell me John Fulton was a gang  
11 member? I don't recall her saying that. The second  
12 question is did Johnitta Griffin tell me about doing bad  
13 things? The answer is yes. It's here in this  
14 statement.

15 Q All right. And the bad things that Johnitta  
16 Griffin told you about John Fulton doing, you documented  
17 in her handwritten statement, right?

18 A Yes, the handwritten statement being a  
19 summary. Not word for word, but a summary of what  
20 Ms. Griffin told me.

21 Q And you didn't leave out any bad acts that  
22 Ms. Griffin told you John Fulton had committed out of  
23 her statement, right?

24 A Nothing that would be relevant to what I was  
25 working on. If she told me that he did some bad things

1 that were unrelated to Christopher Collazo, I might not  
2 have included them in the statement because they weren't  
3 relevant. I just I don't remember her saying any --  
4 saying anything like that.

5 Q And you don't remember Johnitta Griffin saying  
6 anything about John Fulton being a gang member, right?

7 A I don't remember her saying that.

8 Q According to John Fulton, he said that Stick  
9 had a baseball bat with him when he came upon him on  
10 79th Street; is that right?

11 A I -- so, again, I talked to John Fulton three  
12 times and I don't --

13 Q In the confession.

14 A Pardon me?

15 Q In the confession on the 21st.

16 A On the 21st. I have to refresh my  
17 recollection with the memo.

18 Q Sure. So showing you what we marked as  
19 Exhibit number 4, page 4, it says, "Stick had a baseball  
20 bat with him." Do you see that?

21 A Let me get oriented here. First paragraph?

22 Q Right where my cursor is.

23 A Fulton --

24 Q "Mitchell saw Riff and Stick hanging around  
25 either on Crandon or Luella. Stick had a baseball bat

1 with him."

2 A I see that.

3 Q Did you ask either Fulton or Mitchell why  
4 Stick had a baseball bat with him while they were on --  
5 while -- you know, while it was a day that was three  
6 degrees above zero and negative ten degrees below zero?

7 MR. GAINER: Object to form. Argumentative.

8 A I don't recall if I asked that question.

9 Q Well, did you ask Anthony Mitchell if -- what  
10 he and Stick had been doing prior to being picked up by  
11 John Fulton that day?

12 A I don't recall if I asked that question.

13 Q Were you --

14 MR. GAINER: Russell, seven hours. We're at  
15 seven hours.

16 MR. AINSWORTH: I thought we started at --  
17 Sydney, how long -- I thought I had ten minutes?

18 COURT REPORTER: We are at 2 hours and  
19 26 minutes.

20 MR. GAINER: Oh. Oh, sorry. My mistake. My  
21 clock must be fast.

22 MR. AINSWORTH: It's okay.

23 MR. GAINER: Two minutes. We got two minutes.

24 MR. AINSWORTH: I intend to be done, and I'm  
25 not there just yet.

1 MR. GAINER: Okay.

2 BY MR. AINSWORTH:

3 Q But -- and this is my last point that I wanted  
4 to just clear up. Did you ask -- did you want to know  
5 from Anthony Mitchell what he and Antonio Shaw were  
6 doing with a baseball bat on the street on a bitterly  
7 cold night?

8 A I don't know if --

9 MR. GAINER: Object to form. Go ahead. Sorry.

10 Go ahead.

11 A I don't know if Mitchell told me that he or  
12 Stick had the baseball bat with them when Fulton picked  
13 them up. I don't remember.

14 Q Did you want to know what Stick and Mitchell  
15 had been doing before Fulton came to get them?

16 A I don't recall whether that was something I  
17 wanted to know or not.

18 Q And Mitchell didn't tell you anything that  
19 wasn't captured in -- strike that. Mitchell didn't tell  
20 you anything relevant to the Collazo homicide that  
21 wasn't captured in his video recorded confession,  
22 correct?

23 A What I would say is that the -- the video  
24 recording or the video recorded statement was  
25 substantially the same as what Anthony Mitchell told me

1 when I talked to him on March 21st.

2 Q And you don't have any recollection of  
3 anything that he said different from what was in the  
4 recorded statement, right?

5 A That's correct.

6 Q All right. I --

7 A At least nothing -- at least nothing relevant  
8 or significant.

9 Q Do you have a memory of things that are not  
10 relevant or insignificant?

11 A No. I --

12 Q Why'd you make that clarification?

13 A Because what I said is that this -- the video  
14 statement was substantially the same. It doesn't mean  
15 it was exactly the same.

16 Q I'm just saying do you remember anything  
17 different?

18 MR. GAINER: He answered that question  
19 already. He just answered that question. Go  
20 ahead. Answer again.

21 A I don't, no.

22 MR. AINSWORTH: All right. I don't have any  
23 further questions.

24 MR. GAINER: Okay. Anyone else have  
25 questions?

1 MR. FASONE: No, not for the defendant

2 officers.

3 MR. GAINER: How about for the city?

4 MS. ISAAC: Sorry, I removed the wrong mute.

5 Not on behalf of the city.

6 MR. GAINER: Okay.

7 COURT REPORTER: All right. And how did you

8 want to handle signature?

9 MR. GAINER: We're going to reserve signature.

10 COURT REPORTER: Okay. Russell, how would you

11 like your copy?

12 MR. AINSWORTH: Electronic only. I do not

13 need a word index.

14 COURT REPORTER: Okay. And did you want a

15 copy of the video?

16 MR. AINSWORTH: No, thank you.

17 COURT REPORTER: Okay. Brian, how would you

18 like your copy?

19 MR. GAINER: E-trans with the exhibits PDF,

20 please.

21 COURT REPORTER: Okay. And would you like a

22 copy of the video?

23 MR. GAINER: No, thanks.

24 COURT REPORTER: Okay. All right. Warren,

25 how would you like your copy?

1 MR. FASONE: Same as Brian. No video, please.

2 Thank you.

3 COURT REPORTER: Okay, thank you. And,

4 Carolyn, how would you like yours?

5 MS. ISAAC: We don't need a copy at this time.

6 Thank you.

7 COURT REPORTER: Okay. No video, either?

8 MS. ISAAC: Correct.

9 COURT REPORTER: Okay. I'll get us off the

10 record.

11 (DEPOSITION CONCLUDED AT 1:23 P.M. (CT))

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1 CERTIFICATE OF REPORTER

2 STATE OF ILLINOIS

3

4 I do hereby certify that the witness in the foregoing  
5 transcript was taken on the date, and at the time and  
6 place set out on the Title page here of by me after  
7 first being duly sworn to testify the truth, the whole  
8 truth, and nothing but the truth; and that the said  
9 matter was recorded digitally by me and then reduced to  
10 typewritten form under my direction, and constitutes a  
11 true record of the transcript as taken, all to the best  
12 of my skill and ability. I certify that I am not a  
13 relative or employee of either counsel, and that I am in  
14 no way interested financially, directly or indirectly,  
15 in this action.

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21

22 SYDNEY LITTLE,

23 COURT REPORTER/NOTARY

24 COMMISSION EXPIRES: 03/18/2026

25 SUBMITTED ON: 12/15/2022